



Australian Government



Australian  
**Charities** and  
**Not-for-profits**  
Commission

# ACNC GOVERNANCE STANDARDS GUIDANCE

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# Contents

ACNC's approach to governance standards	1
Timeframes for meeting the governance standards	2
Governance standard 1	3
Governance standard 2	6
Governance standard 3	9
Governance standard 4	10
Disqualification of responsible persons	13
ACNC's suggested declaration letter for responsible persons	15
Governance standard 5	16
Duties of responsible persons	20
ACNC's suggested letter for new responsible persons	21

## Governance standards

Before a charity can be registered with the Australian Charities and Not-for-profits Commission (ACNC), it must meet a set of governance standards (unless it is a basic religious charity). The charity must continue to meet these standards to stay registered.

These standards set out a minimum standard of governance, to help promote public trust and confidence in charities. The governance standards apply from **1 July 2013**.

### What are the standards?

#### **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 \$10 200) or more.

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

Charities must check that their responsible persons (such as board or committee members or trustees – called 'responsible entities' under the ACNC Act) are not disqualified from managing a corporation under the *Corporations Act 2001* (Cth) (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.

## ACNC's approach to governance standards

The ACNC's approach to implementing the governance standards is based on two main points:

1. minimum standards – these standards set out minimum requirements for governance of your charity. They do not cover all aspects of governance. The ACNC provides tools and resources to promote good governance practices beyond these minimum standards.
2. principles-based standards – we will generally apply the standards as a set of high-level (general) principles, rather than as precise rules. In other words, your charity can generally choose how to comply, as long as it can demonstrate, should it be required to do so, that this is appropriate taking into account its situation such as:
  - size
  - purposes
  - reach (local, national or international)
  - activities
  - the people and causes it helps (such as vulnerable people)
  - who its members are
  - source of funding (public donations or government funding), and
  - existing governance systems and processes.

The ACNC will take a flexible approach to enforcement, focussing on achieving our regulatory objectives of promoting public trust and confidence, and supporting a robust and vibrant sector.



Consistent with our regulatory approach and acknowledging that the standards are new, our main task for the first two years will be on providing information and guidance to help charities comply and then monitoring compliance in a phased way.

We will focus on charities that have seriously or deliberately breached the governance standards, for example by diverting money to non-charitable purposes, not disclosing serious conflicts of interest or gross financial negligence.

We will not require every registered charity to send us a general statement or provide us with other evidence of meeting the standards. The ACNC will only act if we have information that indicates that there may be serious risks involved. In this case, we may ask charities to provide us information on how they have met the governance standards.

## What do registered charities need to do now?

**As these are minimum standards, the ACNC expects many charities will already meet most of them.** For example, charities that already comply with obligations under incorporated association legislation or the Corporations Act will already meet most of the standards.

➤ We have guidance how to meet each standard and recommend you read this carefully before taking any action. It is likely to save you time and worry.

Where appropriate, our guidance describes what we think will be the easiest ways (most common steps) for charities to meet the standards. But a small unincorporated volunteer-run charity (such as a self-help support group) may, for example, be able to meet the standard in another way. A larger charity involved in services (such as aged care, child care and programs for vulnerable youth) may be expected to do more for some of the standards. In general, your charity can choose how it wants to meet the standards, provided it can show the ACNC this is reasonable in its situation.

**We expect that most charities will not need to spend significant time nor incur any expenses (including on legal or other professional advice) to meet the standards.**

## When do charities have to comply by?

All charities (except basic religious charities) must meet the governance standards from 1 July 2013. However, there are two exceptions to this requirement:

1. If there is a specific part of your charity's governing document (such as its constitution, rules or trust deed) that prevents it from meeting a part of the standards, your charity has until 1 July 2017 to make any necessary changes to its governing documents to address this. In the meantime, your charity must comply with the standards as far as possible, without breaching its governing document.
2. If your charity is an incorporated association, and:
  - the appropriate incorporated associations legislation sets out duties for its responsible persons, and
  - your charity (and its responsible persons) comply with such duties,
 your charity will be taken to meet governance standard 5 until 1 July 2017.

Visit [acnc.gov.au](http://acnc.gov.au) to read more about timeframes for meeting parts of the standards.

## How do the standards apply to charities applying to register?

When your charity applies to register with the ACNC, you need to make sure that it meets the governance standards. Meeting the standards is also part of your charity's ongoing entitlement to registration. Please read our guidance on meeting each standard, set out in the following pages.

## More information

The information in this guide is also available on our website, [acnc.gov.au](http://acnc.gov.au). Visit 'Manage my charity' and find 'Ongoing obligations' to access guidance on the standards. We also have ACNC tools and resources available, also under 'Manage my charity'.

The ACNC will also be developing more guidance on the standards as we further develop our approach. To keep up to date, please subscribe to our email updates and check our website regularly.

For more background, read the policy issues and consultation led by Treasury about the standards, in the Not-for-profit reform section of Treasury's website, [treasury.gov.au](http://treasury.gov.au).

# Governance standard 1: Purposes and NFP character of a charity

## Who does this standard apply to?

This standard applies to all registered charities, except basic religious charities.

## Why is this standard required?

This standard:

- allows the public to easily identify a charity's purpose and not-for-profit character
- requires charities and their responsible persons (such as board or committee members, or trustees) to work toward their charitable purpose
- helps give the public confidence that charities are working towards their charitable purpose.

## What does this standard require?

This standard requires charities to:

- demonstrate that they are established as a not-for-profit body (entity) with a charitable purpose
- actually run as a not-for-profit and work towards their charitable purpose
- provide information about their charitable purpose to the public.

## How can my charity meet this standard?

The most common steps your charity can take to meet this standard are to:

- have clauses in your governing documents (such as your charity's constitution, rules or trust deed) setting out your charitable purpose and not-for-profit nature
- run your organisation as a charity (by following its purpose and being a not-for-profit)
- provide your governing documents to the ACNC to be uploaded on the ACNC Register.

## Demonstrating your charity is not-for-profit and works towards charitable purpose

Charities can meet this standard by including their charitable purpose and a rule requiring them to operate as a not-for-profit in their governing documents (such as in their constitution, rules or trust deed).

This is likely to be the easiest way of meeting this standard as most registered charities will already have governing documents that have these clauses or rules. For example as part of your organisation's endorsement as a charity by the ATO before 3 December 2012, it is very likely that your governing documents would have had the relevant clauses. The ACNC also asks charities wishing to register with us to provide a copy of their governing documents, and to include similar clauses at the time of applying to register. Registered charities will also have a copy of their governing documents published on the ACNC Register.

However, having governing documents is just one way of complying. Your charity does not have to use a formal document, or even something in writing, if this is reasonable for your charity's situation. For example, a small charity might save a copy of an email of an agreement between members on the charity's purpose. Or it might be that your charity has a mission statement that clearly outlines its charitable purposes. Even if these types of documents are less formal, they may be sufficient to show your charity's not-for-profit nature and charitable purpose for this standard.

## Operating as a not-for-profit and working towards your charitable purpose

Your charity must not just be set up as a charity, it must also continue to run as one, or it will fail to meet this governance standard. This includes:

- continuing to be not-for-profit, and
- working towards a charitable purpose.

Generally, 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 (responsible persons) or their friends or relatives. The definition of not-for-profit applies both while the organisation is operating and if it winds up (closes down).

You can meet this part of the standard by, for example, having financial controls to make sure the donations your charity collects, or any profits it makes, are only applied to its charitable purposes.

You can read more about the ACNC's requirements for being a not-for-profit and having a charitable purpose on our website, [acnc.gov.au](https://www.acnc.gov.au). Visit. You may also like to read our general tips on basic financial controls.

## Making information about your purposes available to the public

The easiest way of meeting this standard is to provide the ACNC with a copy of your charity's governing documents for the public ACNC Register. If you haven't yet sent us your governing documents, you will be able to do so online in the near future. We will let you know when this is available. More information about transitional arrangements and the ACNC Register is available at [acnc.gov.au](https://www.acnc.gov.au).

There are also other ways to meet this standard, provided this is reasonable in your charity's situation. For example, you could:

- explain what your charity does on its website or through social media
- provide the information on request by phone, email or in writing
- display your charity's purpose at your charity's office.

You should make sure that the purposes you make public are consistent with those in your governing rules.

The steps that are reasonable depend on different factors. For example, a small charity that doesn't have a public profile or online presence may provide information about their charitable purpose to the public by phone or email if members of the public ask for it. If a charity is larger, receives public donations and so on, information about its charitable purpose should be more readily accessible, such as through publishing its annual reports or its website.

Once your governing documents appear on the ACNC Register however, you will be considered to meet this standard.

## Case examples

These are examples of what may meet and not meet governance standard 1.

### > Meets governance standard 1

Jennifer is setting up a new charity using the Victorian model rules for incorporated associations, which include its purposes and a not-for-profit clause. She registers the charity with the ACNC, which puts up the contact details and governing rules of the charity on the ACNC Register. As long as Jennifer's charity follows these rules, it meets this standard.

### > Meets governance standard 1

Vivian and four other parents from her daughter's school run a small, unincorporated charity that provides second-hand books to school libraries. The charity does not have any rules written down yet but lists its telephone number in a public telephone directory. When they are contacted by telephone, they can explain their purpose and how the charity's money and resources are used. They feel confident that all of the charity's assets are only used for the purpose of helping libraries and not for private benefit. The charity meets this standard.

### > Meets governance standard 1

The Spirit Moves, a small religious group, has a short statement on who they are and what they believe on the noticeboard at its place of worship. They use this on leaflets and to explain to people who ask about their group. Any money that is donated is managed by their treasurer, who makes sure it is only used for the group's purposes. The charity meets this standard. (Note: If The Spirit Moves is a basic religious charity, it is not subject to the governance standards.)

### > Does not meet governance standard 1

The Appleby Foundation, which raises money for medical research, has rules that set out that it is a not-for-profit and its purposes. It publishes its rules and its annual report on its website. However, the CEO of the foundation uses the trust's money to pay for excessive fees for IT services that the foundation received. These services were provided by a company owned by her husband. This charity does not meet this standard.



## Governance standard 2: Accountability to members

### Who does this standard apply to?

This standard applies to registered charities (except basic religious charities) that have members. For example, charities that are incorporated associations, companies limited by guarantee and other companies under the Corporations Act and unincorporated associations all have members.

Other legal structures, such as charitable trusts, do not have members. This standard does not apply to trusts and other types of organisations that do not have members.

### Why is this standard required?

Charities must be open and accountable to their members. This standard allows members to be in a position to understand their charity's operations and raise questions they may have about its governance (for example, about where future activities will be focussed and its financial position).



If your charity is a company, an Indigenous corporation, an incorporated association or a co-operative and already meets its responsibilities to hold meetings under its incorporating legislation, then we will assume it is meeting this governance standard.

### What does this standard require?

This standard requires charities to:

- take reasonable steps to be accountable to their members
- allow their members adequate opportunities to raise concerns about how the charity is run.

Being accountable includes letting your members know what your charity is doing and the results of those activities. It also means members should be given the opportunity to ask questions and raise concerns on how the charity is run.

This standard only requires charities to be accountable to their members. Your charity may be required to be accountable to other stakeholders (such as to donors or volunteers) under other law. It is also good practice to regularly communicate to all stakeholders.

## How can my charity meet this standard?

The most common steps your charity can take to meet this standard are to:

1. organise a meeting at least annually with your members (such as an annual general meeting (AGM)) with opportunities to ask questions and vote on resolutions
2. give information to members on the charity's activities and finances
3. have clear processes for appointing responsible persons (such as board or committee members). This can include setting out the process in your governing documents (such as constitution, rules or trust deed).

Charities should keep records of their members and keep this list updated.

The above steps to comply are common or minimum requirements only, and are taken in context with what a charity is required to report to the ACNC. For example, even though a small charity does not have to submit a financial statement to the ACNC, members should be able to ask for some financial information.

If a charity is larger, has a broad reach and so on, your charity may need to do more to meet this standard. For example, for some charities 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
- nominating, appointing or electing responsible persons (for example, some charities may have a committee that nominates people even though the appointment remains the decision of the governing body).

There are many ways other than those listed above that help show a charity is meeting this standard. As long as you can show to the ACNC that the steps your charity has taken are reasonable in your charity's situation, the ACNC will be flexible in its approach to this standard.

## What if my charity already has to hold meetings and involve members?

Your charity may already have requirements to be accountable to members because of its legal structure.

However, for companies registered under the Corporations Act, the obligations to the Australian Securities and Investments Commission (ASIC) relating to member meetings will no longer apply from 1 July 2013. If your charity is a company, you will be able to decide whether to:

- continue the same meeting processes that would otherwise comply with the Corporations Act – your charity will be taken to meet this standard, or
- change your governance processes (including changing your governing documents if necessary) to better suit your charity's circumstances, for example choosing to no longer hold AGMs. In this case you will need to be able to show to the ACNC, if asked, that your charity has taken reasonable steps to be accountable to members and to allow them adequate opportunities to raise concerns about how your charity is run.

You can read more about changes for charities registered with ASIC and ACNC, and the ACNC's general approach to the governance standards, at [acnc.gov.au](http://acnc.gov.au).

## Case examples

These are examples of what may meet and not meet governance standard 2.

### Meets governance standard 2

The Western Community Health Centre provides health services to disadvantaged people. It is an incorporated association in Western Australia. As required under its state incorporated associations' legislation, the centre holds an annual general meeting at which copies of its financial statements are provided to members. The Treasurer provides a short report to the meeting and answers questions. It has recently provided a copy of its rules to the ACNC and, before they appeared on the ACNC Register, also provided a copy to members on request. These rules require the Centre to hold an election to choose new board members. The charity meets this standard.

### Meets governance standard 2

The Parkwest Cat Shelter is a small charity that operates a shelter for unwanted cats. The shelter is a company limited by guarantee with 30 members, mostly volunteers and donors. They decide to follow the same meeting procedures as before under Corporations Act, except they now allow resolutions to be tabled at meetings, and allow meetings to be called with only 14 days' notice. They continue to provide members with a short annual report including financial information. The members know that existing board members can appoint new board members to fill any vacancies. The Parkwest Cat Shelter meets this standard.

### Meets governance standard 2

Rainbow House is a company limited by guarantee under the Corporations Act. Despite the meeting obligations being removed from this Act after 1 July 2013, Rainbow House decides to keep its meeting processes the way they are, which include presenting an annual report including a financial report, and holding an election for directors at the annual general meeting. Because these processes meet the requirements of the Corporations Act, the charity meets this standard.

### Does not meet governance standard 2

The Lakes District Association does not hold any regular meetings with its members or provide any other regular information to its members, despite its rules requiring it to do so. The charity does not meet the standard.

## Governance standard 3: Compliance with Australian laws

### Who does this standard apply to?

This standard applies to all registered charities, except basic religious charities.

### Why is this standard required?

As for each of us, charities must comply with the law. For charities, acting lawfully helps to protect their work, assets, reputation and the people they work with. **As charities are already required to follow Australian laws, this standard does not impose a new burden on charities.** The standard has been included to allow the ACNC to investigate potentially serious breaches of law such as fraud. Without this standard, the ACNC may not be able to act in relation to these kinds of cases.

This standard does **not** mean that the ACNC will investigate every alleged breach of law by a charity. We will only investigate behaviour that relates to serious offences (for example, fraud, money laundering or terrorist financing) that are likely to affect public trust and confidence and where this is necessary to protect the assets of the charity and the people it serves.

We generally will not investigate breaches of law or issues which other regulators or the police are better placed to handle, but will work with those agencies as appropriate.

**This standard does not require charities to send the ACNC evidence that they are complying with all Australian laws.**

### What does this standard require?

The standard sets out that a charity must 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 a jury), or
- a breach of law that has a civil (not criminal) penalty of 60 penalty units (currently \$10 200) or more.

This standard applies to the charity itself. It does not generally apply to the individual behaviour of people involved with your charity, such as volunteers or administrative staff. It may, however, apply to the acts of members of your charity's governing body or senior managers, if this is seen as acting on behalf of the charity.

### How can my charity meet this standard?

This standard does not create new obligations. Your charity fails to meet this standard if it acts in a way that could be dealt with as a serious breach of Australian law.

There are some simple steps your charity can take to reduce the risk of breaching this standard. In most cases, this relates to common sense and good practice, such as being familiar with the main areas of regulation relating to your charity, having some basic financial controls, and having a process to ensure your charity meets its legal obligations. The extent and type of processes and controls that are reasonable for each charity will vary depending on their situation (size, activities and so on).

For more information, read our factsheets on the regulation of charities by state or territory. If you want more materials on good governance, read our tools and resources. You might find our Quick tips a useful starting point. All of these resources are available at [acnc.gov.au](https://www.acnc.gov.au).

## Case examples

These are examples of what may meet and not meet governance standard 3.

### > Meets governance standard 3

Hands for Friends is a self-help group for people recovering from substance abuse. The group has 20 members and five of those members form the charity's board. They don't often have legal issues and as far as they know, the charity has not acted in any way that could be a serious offence under Australian law. Hands for Friends meets this standard.

### > Meets governance standard 3

The Red Tree is a charity that provides childcare services. Because the organisation must follow laws across a number of areas (including employment, working with children and food-handling), the agency had developed a document that sets out the areas of law that they need to comply with and what they are doing to meet these legal obligations. The board reviews this document regularly and considers whether any changes need to be made. As far as the board is aware, the charity has not acted in any way that could be a serious offence under Australian law. The Red Tree meets this standard, and has taken reasonable steps to help ensure it does not commit serious offences.

### > Meets governance standard 3

The Good Kitchen operates a charity that gives food to people experiencing poverty. It has some paid staff but mostly relies on volunteers. The ACNC receives evidence Good Kitchen is breaching health and safety laws. The ACNC refers the complaint to the relevant health and safety regulator as the issue more appropriately falls within their expertise. The breach is found not to be serious. The Good Kitchen meets this standard.

### > Does not meet governance standard 3

Global Earth is established to provide training to the community on environmental issues. It receives a large donation from one person. Global Earth contracts with another organisation to conduct training on its behalf. The ACNC receives evidence that training was never conducted, the funding has been used fraudulently and that this organisation is controlled by Global Earth's donor. The ACNC does not need to wait for charges to be laid to start investigating this as a case of potential fraud committed by the charity. We may also consider whether it's appropriate to notify other government agencies, such as the police, if this relates to potential criminal offences.

## Governance standard 4: Suitability of responsible persons

### Who does this standard apply to?

This standard applies to all registered charities, except basic religious charities.

### Why is this standard required?

This standard ensures that registered charities are not controlled by people who may pose a risk to the charity's financial position or the pursuit of its charitable work.

For charities to operate effectively, it is important that its members, the people it serves (its beneficiaries) and the public have confidence in the suitability of their responsible persons.

Responsible persons are the members of your charity's governing body, who share responsibility for the governance of your charity (called 'responsible entities' under the ACNC Act). They may be board or committee members, or trustees.

Find out more about the definition of responsible persons and the role of governing bodies in our guide: Governance for good, available at [acnc.gov.au](http://acnc.gov.au).

### What does this standard require?

The standard requires that charities take reasonable steps to be satisfied that each of its responsible persons is not disqualified from:

- managing a corporation under the Corporations Act
- being a responsible person by the ACNC Commissioner, within the previous 12 months.

If a charity is not satisfied, it must not appoint this person or, if they are already appointed, must take reasonable steps to remove them as a responsible person.

While the standard relates to responsible persons, the obligation applies to the charity itself, rather than to individuals (the responsible persons). The requirement to ensure that responsible persons are not disqualified from managing corporations applies even if your charity is not a company.

### How can my charity meet this standard?

Your charity meets the first part of this standard if, before it appoints a responsible person, it:

- searches the ASIC Disqualified Persons Register, available at [asic.gov.au](http://asic.gov.au)
- searches the ACNC Register of Disqualified Persons, which is available at [acnc.gov.au](http://acnc.gov.au) – the ACNC only commenced on 3 December 2012 and has not yet disqualified anyone
- requires all its responsible persons to sign a declaration relating to disqualifying offences. The ACNC has a suggested declaration that you can use, see following. You can also access the declaration at [acnc.gov.au](http://acnc.gov.au).

You should also take these steps for existing responsible persons.

In searching the ASIC and ACNC Registers, also consider whether a responsible person has been known previously by a different name. Searches of both registers are free of charge.

## Making sure responsible persons are suitable

If your charity takes the steps listed above, it will be taken to meet this first part of the standard. While it is not required under this governance standard, other laws may require your charity to make further checks on suitability depending on its activities and who it works with, such as a working with children check.

For example, if any of your charity's responsible persons engage in child-related work or work with vulnerable people, you will be required to ensure working with children or vulnerable persons checks are obtained (and remain current). The exact requirements depend on the particular laws in the state or territory in which your charity operates.

Read our Quick tips on choosing a new board member at [acnc.gov.au](https://www.acnc.gov.au).

## Removing unsuitable responsible persons

If your charity takes the steps listed above, and it is not satisfied its responsible persons pass the requirements before they are appointed or at any time while they are on the governing body, it must take reasonable steps to remove the person.

The most common way your charity can meet this part of the standard is to:

- ask the responsible person to resign
- if the person refuses to resign, follow the process in your governing documents and under any relevant legislation (for example, the Corporations Act or the relevant state or territory laws) to remove the responsible person (such as calling a meeting of the board or committee and/or a general meeting of the members to vote on removing the person).

If your charity cannot remove the person (for example, where the members of a company limited by guarantee refuse to remove a director), please contact the ACNC for further advice. You may also consider whether it is necessary to involve another regulator, for example the one that your charity was incorporated by.

If on the other hand, there are good reasons to keep the person, please contact the ACNC as the ACNC Commissioner may give you permission to do so.

## Disqualification of responsible persons

Under governance standard 4, charities must be satisfied that their responsible persons (board or committee members, or trustees – what the ACNC Act calls ‘responsible entities’) are not disqualified from managing a corporation nor disqualified by the ACNC from being a responsible person.

A key part of meeting this obligation is for your charity to check, before appointing a responsible person, that the person is not disqualified. A charity can do this by:

- searching the Australian Securities and Investments Commission (ASIC) [Disqualified Persons Register](#)
- searching the ACNC [Register of Disqualified Persons](#), and
- asking their responsible persons to sign a declaration confirming that they are not disqualified and agreeing to notify the charity if the person becomes disqualified in the future.

### Who may be disqualified from being a responsible person for a charity?

You may be disqualified from being a responsible person if you:

- have been disqualified by the ACNC in the past year, or
- are disqualified from managing a corporation within the meaning of the Corporations Act 2001 (Cth).

This may occur if you:

1. have been convicted of certain offences, such as serious offences, dishonesty offences or other offences that can affect a corporation,
2. are an undischarged bankrupt or are subject to a ‘personal insolvency agreement’ you have not followed, or have been disqualified by the ASIC, the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations (ORIC), or an Australian or New Zealand court.

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

However, if you think one or more of these categories may apply to you, the questions below will help you work out if you are disqualified from managing a corporation.

Contact the ACNC if you are unsure about any of the questions below.

#### Question 1: Have you been convicted of certain offences?

Have you have been convicted of any of the following:

- a serious (‘indictable’) offence that involves making or participating in making, a decision that affects the whole or a substantial part of the business of a corporation (including an Aboriginal and Torres Strait Islander corporation)
- a serious (‘indictable’) offence for actions that could significantly affect a corporation’s (including an Aboriginal and Torres Strait Islander corporation’s) finances
- an offence that is a contravention of the Corporations Act or the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) that is punishable by imprisonment for more than 12 months
- an offence involving dishonesty that is punishable by imprisonment for at least three months, or
- a serious offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

These include offences against the law of a foreign country.

**No.** Move to Question 2 below



**Yes.** If you have been convicted of one of these offences, has:

- it been less than five years (from conviction, if no prison sentence, or from release from prison), or
- a court extended your disqualification time (and it is still within this disqualification time)?

**Yes.** You are disqualified from managing a corporation. However, if the corporation affected is or was a registrable Australian body or foreign corporation contact us to work out if you are disqualified (since an exception may apply).

Otherwise, please do not sign the declaration. If you still want to act as a responsible person for a registered charity, see below.

### Question 2: Are you bankrupt or under personal insolvency?

Have you:

- ever been bankrupt (under Australian or any foreign law) and have not been discharged from this bankruptcy, or
- made a 'personal insolvency agreement' and not complied with the agreement?

**No.** Move to Question 3 below



A personal insolvency agreement is a formal agreement between a person and their creditors, when that person cannot pay what they owe. This agreement is set out in a deed under Part X of the Bankruptcy Act 1966 (Cth) or a similar law of an external territory or a foreign country.

**Yes.** You are disqualified from managing a corporation. Please do not sign the declaration. If you still want to act as a responsible person for a registered charity, see below.

### Question 3: Have you been disqualified by a court or regulator?

Have you:

- had a New Zealand court order made against you preventing you from being a director or being involved in the management of a foreign company, or
- been disqualified by an Australian court, ASIC or ORIC and this disqualification is still current?

**No.** You are not disqualified from managing a corporation. You can sign the declaration.



If you are unsure, ASIC keeps a register of people who have been disqualified by ASIC, ORIC or an Australian court (but not by a New Zealand court).

**Yes.** You are disqualified from managing a corporation. Please do not sign the declaration. If you still want to act as a responsible person for a registered charity, see below.

### Question 4: I am disqualified from managing a corporation. Can I still be a responsible person for a charity?

**Yes.** Even if you are disqualified from managing a corporation, you may still be able to be a responsible person of a registered charity if the ACNC allows you to do so (as well as ASIC or ORIC if necessary).

We will allow this if it is reasonable to do so in your circumstances. Please contact the ACNC for more information if you are disqualified, but would like to request the Commissioner to allow you to be a responsible person.

## ACNC's suggested declaration text

Prior to appointing a new responsible person, charities can ask that they declare that they have not been disqualified from being a responsible person, for the purposes of governance standard 4.

Charities can use the following words to form the declaration.

*I, [insert name] of [insert address or other identification information] declare that:*

- *I am not disqualified from managing a corporation, within the meaning of the Corporations Act 2001 (Cth), and*
- *I have not been disqualified by the Australian Charities and Not-for-profits Commissioner at any time during the previous year from being a responsible person (what the ACNC Act calls a 'responsible entity') of a registered charity.*

*While I am a responsible person for the charity, I agree to notify the charity as soon as possible if I do become disqualified from managing a corporation within the meaning of the Corporations Act, or am disqualified by the Australian Charities and Not-for-profits Commissioner.*

*Signature:*

.....

*Name:*

.....

*Date:*

/ /

## Case examples

These are examples of what may meet and not meet governance standard 4.

### > Meets governance standard 4

Opportunity Melbourne is a second hand 'op shop' run by a community health service. A new chair is appointed to its committee and wants to make sure that her committee members are all suitable people to be on the governing body of the service. She asks the shop's manager to search for each of their names on ASIC's Disqualified Persons Register and the ACNC's Register of Disqualified Persons, and asks the members to sign a declaration that they are not disqualified (see suggested text above), which they do. Her searches show that all of the committee members are not disqualified from managing a corporation and are not disqualified by the ACNC. Opportunity Melbourne meets the standard.

### > Meets governance standard 4

May's Van is a small charity that provides meals to people experiencing homelessness. The charity is looking to appoint Pelegrin as a member of their board. Before appointing him, they check the ASIC Disqualified Persons Register and the ACNC's list of disqualified persons. They find that he isn't listed on either list, and also ask him to sign a declaration saying that he is eligible to be a member of their board. Pelegrin refuses to sign the declaration. After asking Pelegrin why, the board finds out that Pelegrin was convicted of one of the offences mentioned in the declaration, but that was about 15 years ago. May's Van contacts the ACNC and is advised that this does not make Pelegrin unsuitable under the standard. This is because sufficient time has passed since the conviction for this offence which means he qualifies as a responsible person despite the conviction. There are different time periods set out for each offence, so contact the ACNC if you're not sure.

### > Meets governance standard 4

The Good Ship Enterprise is an incorporated association that provides business training and work for disadvantaged people. It has conducted the checks of the ASIC and ACNC Registers and has declarations from its committee members that none of them are disqualified. However, they find out that one of their committee members has become bankrupt. The committee ask her to resign but she refuses. Under its rules, she can only be removed by a general meeting of the members. The committee calls the general meeting.

- If the members decide to remove the member, the Good Ship meets the standard.
- If the members decide not to remove her, the committee should contact the ACNC to ask for advice.

# Governance standard 5: Duties of responsible persons

## Who does this standard apply to?

This standard applies to all registered charities, except basic religious charities.

## Why is this standard required?

The purpose of this standard is to give the public, including members, donors, staff, volunteers and the people it serves (its beneficiaries), confidence that your charity's responsible persons are managing the charity well.

Responsible persons are the members of your charity's governing body, who share responsibility for the governance of your charity (called 'responsible entities' under the ACNC Act). They may be board or committee members or trustees.

Find out more about the definition of responsible persons and the role of governing bodies in our guide: [Governance for good](#).

## What does this standard require?

Charities must take reasonable steps to make sure that the following duties apply to responsible persons and that they follow them. These duties are:

- 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 conflicts of interest
- to ensure that the financial affairs of the charity are managed responsibly
- not to allow the charity to operate while it is insolvent.

**People who are on the governing body of most charities will already have obligations similar to these under common (judge-made) law or under legislation that affects their charity (such as incorporated association or companies legislation).** These obligations are broadly similar and cover most of the duties in this standard. The ACNC will interpret the duties in line with existing interpretations.

Generally, the duties mean that responsible persons should act with standards of integrity and common sense. Read more about the meaning of each of these duties on the following pages or on our website, [acnc.gov.au](http://acnc.gov.au).

## How can my charity meet this standard?

The most common steps your charity can take to meet this standard are to:

- bring these duties to the attention of responsible persons (such as providing them with their copy of this guidance or other resources (see below for more information) or outline their duties in their letters of appointment (see an ACNC example letter of appointment, following) and at [acnc.gov.au](http://acnc.gov.au))
- provide information to responsible persons on their duties to refresh their knowledge
- encourage responsible persons to attend, prepare for, and participate at meetings
- have processes in place to manage conflicts of interests
- if it comes to your attention that a responsible person may not be carrying out their duties, take reasonable action.

Your charity may already have legal requirements covering responsible persons because of its legal structure. For example:

- state or territory incorporated associations legislation in many cases includes these duties. If your charity and its responsible persons comply with these duties, your charity will meet the standard (there is an express exception for this under the standards)
- for companies under the Corporations Act, the governance standards will replace most of the Act's requirements relating to director duties from 1 July 2013. However, some criminal offences under the Act and similar duties under common (judge-made) law continue to apply.
- trustees have higher duties under the general law
- for unincorporated organisations, most of these duties apply to your charity under common law.

Responsible persons must still comply with any similar duties and responsibilities imposed by other legislation or the common (judge-made) law.

There are also other ways that help your charity show it is meeting the standard. Some charities may be expected to do more, depending on their size, activities, who they help, who its members are, and how they are funded. Other steps could include:

- providing annual training for all responsible persons on their duties and responsibilities
- having a (board or committee) charter that sets out how responsible persons are expected to behave and what their duties are (or setting out such duties in a code of conduct or your governing documents)
- having a policy, procedure or other process (such as in governing documents) to require a responsible person not to vote on matters where the person has a conflict of interest
- having processes for the responsible management of money.

Further information is available at [acnc.gov.au](http://acnc.gov.au), including [Governance for good](#), the ACNC's guide for charity board members.

## Case examples

These are examples of what may meet and not meet governance standard 5.

### > Meets governance standard 5

Bounce Back is a charity providing drug and alcohol services. The committee of management at Bounce Back is made up of volunteers, many of whom also use the charity's service, and none of the members have had experience as committee members before. Bounce Back provides committee members with a letter explaining their responsibilities and a copy of the ACNC's guidance on the duties. Committee members can also access training to help them with their responsibilities if they request. As far as Bounce Back is aware, all of its committee members are carrying out their duties. Bounce Back meets this standard.

### > Meets governance standard 5

Careful Care is a large social service provider that offers services to thousands of people who have complex needs. The board of Careful Care is made up of 12 highly qualified individuals, many with formal qualifications in directing companies and all with significant experience on boards. When new members join the board, Careful Care provides them with an induction process that outlines their responsibilities, conducts an annual review of board performance and acts on any identified areas of need. As far as the board members are aware, all of them are carrying out their duties. The charity meets this standard.

### > May or may not meet governance standard 5

Darling Downs, an educational charity, has a board member who runs a consultancy providing training on online education. This was disclosed before he joined the board, therefore meeting the requirement in governance standard 5.

Darling Downs has decided to expand into this area and is considering different training packages, including one developed by the board member's consultancy.

If the board asks the board member to leave the room while they are discussing the proposal on its merits and he does not vote or participate in the decision about who to award the work to, Darling Downs meets this standard.

If the board member discusses the proposal and votes, Darling Downs does not meet the standard.

## Duties of responsible persons under the governance standards

Under governance standard 5 your charity must take reasonable steps to make sure its responsible persons meet certain duties. The following is a general summary of what each duty requires:

### Act with reasonable care and diligence

Responsible persons are in a position to guide and monitor the management of the charity. They need to understand and keep informed about the charity's activities and finances. For example, it may be a breach of this duty if a responsible person failed to attend several board meetings in a row. However, this duty is not breached if a person cannot take part in managing the charity at the time (for example, because of illness). As well, a responsible person can rely on the special knowledge or expertise of another responsible person, adviser or expert, as long as they adequately inform themselves and make an independent assessment of that information or advice.

### Ensure that financial affairs are managed responsibly

As a minimum, responsible persons should have good processes to prevent problems and to manage money responsibly. This includes reading financial statements and having a process to ask questions if they don't understand. Read our Quick tips on having basic financial controls at your charity and our guide *Protect your charity from fraud*.

### Act honestly in the best interests of the charity and for its purposes

Responsible persons make decisions by honestly considering what would be in the best interests of the charity, and would further its charitable purposes (as set out in the charity's governing documents). This duty is breached if a responsible person uses the charity's property to benefit another organisation, where there was no benefit to the charity or furthering of its charitable purposes.

### Not misuse their position or information

For example, if a responsible person is involved in paying another company owned or controlled by a friend or relative (when it is not reasonable payment for the goods or services provided). An example of misusing information is if a responsible person gives confidential information about the charity's operations to another person or organisation (even if it is to another charity).

### Disclose any actual or perceived conflict of interest

Responsible persons should disclose any situation where they may appear to have a conflict between their duty to act and a personal (private) interest, and should not discuss or vote on any matter where there is such a conflict. For example, if a charity is considering which company to buy its stationery from, a responsible person should declare an interest if one of the companies is owned by his relative. This is true even if there is no actual conflict. A conflict should be disclosed whenever an independent observer could doubt that a responsible person is acting in the best interests of the charity.

In general, the responsible person should disclose the conflict of interest to the other responsible persons. If there is only one responsible person or all of them have a conflict, then the conflict of interest should be disclosed to the members of the charity. If none of these situations apply, contact the ACNC. You can also read our Quick tips on managing conflicts.

### Not allow a charity to operate while insolvent

If a responsible person reasonably suspects that the charity cannot pay all of its debts when they become due, then the responsible person should take all reasonable steps to prevent a charity from taking on more debt. The governing body should regularly review the financial position and ensure there is enough money to pay for its activities.

## ACNC's suggested letter of appointment for responsible persons

Charities can use the following words to set out the 'duties' under governance standard 5 in a *letter of appointment*, for a new responsible person.

Dear [insert name of new responsible person],

Congratulations on your appointment to the governing body of [insert charity name].

In your role, you have a special opportunity to contribute to the work and life of [insert charity name]. Being a [board/committee] member can be challenging at times, but it can also be a rewarding way to help [insert charity name] achieve its charitable purpose.

As a member of the [board/committee] of a charity registered with the Australian Charities and Not-for-profits Commission, you have duties and responsibilities that come with your role. You may also have other obligations and duties under to other government agencies or under other laws.

The ACNC governance standards set core, minimum governance standards that all charities must meet. Governance standard five requires that charities take reasonable steps to make sure that the members of their governing body know and understand their legal duties and carry out their duties. These duties generally require you to be careful and conscientious in your role and to act with common sense and integrity.

The duties are:

- To act with reasonable care and diligence. You must exercise your powers and duties with the care and diligence that a reasonable person would if they were in your place.
- To act in good faith in the best interests of the charity and for a proper purpose. When acting as a board member you must make decisions that are in the best interest of the charity and to further its charitable purpose.
- Not to improperly use information or position. Any special knowledge that you gain as a [board or committee member (insert whichever is applicable)] must only be used for the benefit of the charity and never to further personal or other interests. Similarly, you must not use your position to improperly gain an advantage for yourself or someone else, or cause detriment to the charity.
- To disclose conflicts of interest. If your duty to act in the best interests of the charity is in conflict with (or may conflict with) your personal interests you must disclose this responsibly. [insert reference to any relevant conflict of interest policy/ procedure or requirement in governing documents]
- To ensure that financial affairs are managed responsibly. Ensure that there are systems and processes in place that ensure that the charity's resources are being effectively put towards the charity's charitable purpose and are protected from misuse.
- Not to allow the charity to operate while insolvent. You must ensure that the charity can pay its debts when they are due or will become due and that it does not continue to operate if it cannot pay its debts.

Knowing and carrying out your duties as a [board/committee] member helps [insert charity name] to carry out its charitable purpose and protects its resources against misuse. You can find more information about the duties of those who manage charities on the ACNC's website ([acnc.gov.au](http://acnc.gov.au)) or in the ACNC's guide Governance for good.

If you have any concerns about meeting these duties, talk to [me or insert name] or contact the ACNC for information. Remember that there are resources available and people who can help you to better understand and meet your duties.

Congratulations again on your appointment as a [board/committee] member of [insert charity name]. Thank you for donating your time and expertise.

[Insert name of signatory here- suggest should be chair/ president of charity]



## Notes

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[acnc.gov.au](http://acnc.gov.au)