

Article Information

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COVID-19 - ACNC safe harbour measures for charities

Like other government agencies with regulatory functions, the Australian Charities and Not-for-profits Commission (ACNC) has recently announced several measures to assist registered charities with their compliance obligations.

Compliance with Governance Standards and External Conduct Standards

Charities must meet ACNC's Governance Standards to be and remain registered with the ACNC. In addition, charities that conduct activities overseas must comply with the External Conduct Standards, which govern how a registered charity must manage its activities and resources outside Australia.

The ACNC has recently announced that during the period 25 March to 25 September 2020 (**Applicable Period**) it will not investigate certain breaches of the Governance Standards and External Conduct Standards unless such breaches are significant and harm the public interest.

The ACNC has identified the following three standards in relation to which a safe harbour measure will now apply.

Charitable Purposes

Under Governance Standard 1 and External Conduct Standard 1, charities' activities must align with the charitable purposes set out in their governing document. Where a charity undertakes activities in response to COVID-19, the ACNC has indicated it will accept a charity applying a broad interpretation to its purposes and will take no action in relation to activities that do not clearly align with a charity's purposes, if the charity:

1. reasonably shows that its members would approve of the activity; and
2. documents how it believes the new activities align with its charitable purposes or are incidental or ancillary to its charitable purposes.

The ACNC has recommended that before a charity decides to undertake a new activity that assists in the response to COVID-19, it should review its purposes set out in its governing document and, if the proposed activities do not align with its charitable purposes, seek to amend its governing document.

Solvency Requirement

Governance Standard 5 requires Responsible Persons for charities to take reasonable steps to make sure that the charity does not operate whilst insolvent. With respect to the application of this Governance Standard, the ACNC has indicated that it will follow the amendments to the *Corporations Act 2001* (Cth) by the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth).

This Act provides relief for directors from their personal liability to prevent insolvent trading if the debt is incurred in the ordinary course of business during the Applicable Period before any appointment of an administrator or liquidator. The ACNC has indicated that it will apply the approach to all charities and not just those charities that are companies limited by guarantee to which the Act applies.

In applying this approach, the ACNC requires the charity to:

1. ensure that its Responsible Persons are aware of the issue and have a plan for the charity to return to viability when

- the COVID-19 crisis has passed which is achievable; and
2. inform its members and the ACNC if the charity is operating whilst insolvent.

Records of Overseas Activities

External Conduct Standard 2 requires a charity to obtain and keep sufficient records of its operations outside Australia to enable it to prepare a summary of its activities and related expenditure outside Australia on a country-by-country basis.

The ACNC has advised that it will not investigate breaches of this External Conduct Standard where a charity cannot obtain records during the Applicable Period due to the effects of COVID-19. This safe harbour for compliance with the Standard is conditional on the charity:

1. recording the reasons it cannot obtain the records; and
2. obtaining any outstanding records from its overseas operations and partners as soon as practicable.

Annual Information Statements

The ACNC has also announced that, in recognition of issues charities are likely to experience as a result of the effects of COVID-19, charities with an Annual Information Statement (**AIS**) due between 12 March and 30 August 2020 have been granted a blanket extension to file their AIS until 31 August 2020.

If you would like advice regarding any of these ACNC safe harbour measures and/or changing your charity's activities to respond to COVID-19, please contact Sarah Johnson.