



AUSTRALIAN CHARITIES OPERATING OVERSEAS SUBJECT TO NEW CONDUCT STANDARDS

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Australian charities operating overseas or working with a third party overseas must, from 22 July 2019, comply with the External Conduct Standards (Standards). These are in addition to the existing Governance Standards which apply to all Australian charities.

Which charities are affected?

The Standards outline the minimum standards of governance, monitoring and reporting that Australian registered charities must comply with if they operate outside of Australia or

partner with organisations that operate outside Australia (in whole or in part).

When do the Standards not apply?

Charities should give consideration to which activities are subject to the Standards and which are not. The Standards do not apply to charities that may carry out activities outside of Australia where those activities are directly related to the pursuit of the charities' purposes in Australia and are merely ancillary to the activities of the charity.

The Standards – what you need to do?

Affected charities must comply with the following Standards:

1. Activities and control resources (including funds)

This standard aims to give the public confidence that charities are well managed by ensuring that charities maintain internal and external controls to provide that its activities are carried out (and the resources given to third parties outside Australia) are applied in a manner that is consistent with the charity's purpose and character. This is to ensure that the charity is managed in a way that:

- a) it remains solvent;
- b) minimises risks to the charity's assets;
- c) ensures that its resources are used in furthering the charity's purposes; and
- d) ensures that it is being operated in a manner consistent with its purpose and character as a not-for-profit.

The Standard's objects are not just about ensuring or safeguarding the activities undertaken by the registered entity while operating overseas, but also preventing registered entities from being used by other parties in a way that is not consistent with its status as an Australian not-for-profit entity. This promotes transparency and confidence across the sector and the public that the registered entity's activities, funds and services are applied for legitimate and intended purposes.

Affected charities must also maintain reasonable internal control procedures to ensure that the charity's operations and activities conducted outside of Australia comply with Australian laws relating to money laundering, financing terrorism, sexual offences against children, slavery, trafficking of people (including debt bondage), people smuggling, international sanctions, taxation and bribery.

2. Annual review of overseas activities and record-keeping

Affected charities are to obtain and keep records necessary to prepare a summary of its activities and expenditure outside Australia on a country by country basis for each financial year.

The object of this standard is to ensure that Australian charities are transparent and accountable to the Australian public in relation to its activities carried on outside Australia.

The 'summary' must include the following information:

- a) the kinds of activities that the charity conducted outside Australia (on a country-by-country basis);
- b) details of how the charity's activities outside Australia enabled it to pursue and achieve its purpose (on a country-by-country basis);
- c) details of all expenditure relating to its activities outside Australia (on a country-by-country basis);
- d) details of any procedures and processes that the charity used to monitor its overseas operations and activities;
- e) a list of the third parties that the charity worked with outside Australia; and
- f) details of any documented claims of inappropriate behaviour by the charity's employees or responsible entities outside Australia, and subsequent actions taken by the registered entity as a result.

3. Anti-fraud and anti-corruption

Affected charities are required to take reasonable steps to ensure it has processes and

procedures in place to minimise any risk of corruption, fraud, bribery or other financial impropriety by its responsible entities (such as directors), employees, volunteers and third parties outside Australia. This also includes the ability to identify and document any perceived or actual material conflicts of interest involving those persons.

The standard is intended to promote confidence that the resources of charities are being used to further its not-for-profit purposes and are not being misused for illicit or improper purposes.

4. Protection of vulnerable individuals

This standard aims to ensure that affected charities minimise the risk of exploitation or abuse to vulnerable individuals outside Australia.

Vulnerable individuals are defined as:

- a child (i.e. a person under the age of 18 years); or
- an individual who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation due to their age, illness, trauma, disability or some other disadvantage.

This standard requires a charity to take reasonable steps to ensure the safety of vulnerable individuals overseas. It applies where individuals are:

- being provided with services or accessing benefits under programs provided by the charity (whether directly or through collaboration with a third party)
- engaged by the charity, or a third party in collaboration with the charity, to provide services or benefits on behalf of the charity or third party.

The consequences of not complying with this standard may be significant and may include deregistration of your charity.

How can we help?

McInnes Wilson Lawyers can help you:

- identify whether or not your charity is subject to the Standards noting that the size and scale of your charity may affect how compliance with the Standards are

- measured. As an example, larger charities with significant resources overseas may need to implement training and regular auditing of compliance with the Standards;
- review your charity's processes and procedures to confirm whether they are compliant; and
 - draft your charity's compliance documents to ensure they satisfy the Standards.

Contact the article author for more info



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