



CORNEY & LIND
LAWYERS

POST TRANSITION FROM AN
UNINCORPORATED ASSOCIATION TO
COMPANY LIMITED BY GUARANTEE:
PRACTICAL TIPS

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Summary

Your have transitioned your church entity from an **unincorporated association** to a **company limited by guarantee**.

Benefits of this transition:

- Your Directors now have increased legal protection;
- Your Church entity can now enter into contracts;
- Your Church entity can now own property;
- People (and banks) will understand your Church entity better;
- Your new structure is a better fit for overseas operations;
- Your Church entity is governed under the *Corporations Act 2001* (Cth) (and the ACNC Governance Standards).



Responsible Persons

Who are your Responsible Persons?

Your Board of Directors.

Responsible Persons must ensure that the Church entity complies with the ACNC Governance Standards.

ACNC Governance Standards

Australian Charities and Not-for-profits Commission Regulation 2013

The Governance Standards are a set of core, minimum standards that deal with how charities are run.

There is no “cookie cutter” approach on how to comply with the Governance Standards → It will be dependant on things like the size, purpose and activities of the Church.

The Directors must decide on how the Church will comply with the Governance Standards.

Governance Standard 1

Topic: Purposes and not-for-profit nature

Requires a charity to:

- Demonstrate that they were set up as a not-for-profit with a **charitable purpose**;
- Demonstrate that they **are run as a not-for-profit** and work towards that charitable purpose; and
- Make information about its purposes **available to the public**.

Governance Standard 2

Topic: Accountability to Members

Requires a charity to:

- Take reasonable steps to be **accountable to its members**; and
- Allow its members adequate opportunities to **raise concerns** about how the charity is run.

Governance Standard 3

Topic: Compliance with Australian laws

Requires a charity to NOT act in a way that could be dealt with under Commonwealth, state or territory law 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 (currently \$12,600) or more.

Governance Standard 4

Topic: Suitability of Responsible Persons

Requires a charity to take reasonable steps to be satisfied at all times that its Responsible Persons (Directors) are not disqualified from:

- Managing a Corporation under the *Corporations Act 2001* (Cth);
- Being a Responsible Person by the ACNC Commissioner within the previous 12 months.

Governance Standard 5

Topic: Duties of Responsible Persons

Requires a charity to take reasonable steps to make sure that Responsible Persons adhere to the following duties:

- To act with reasonable care and diligence;
- To act honestly and fairly in the best interests of the charity, and for its charitable purposes;
- Not to misuse their position or information they gain as a Responsible Person;
- To disclose conflicts of interest;
- To ensure that the financial affairs of the charity are managed responsibly; and
- Not to allow the charity to operate while it is insolvent.

Governance Standard 5

The most recent ACNC Compliance Report indicates that almost one third of its compliance activity in the relevant year was to do with Governance Standard 5.

General Director Duties

The *Income Tax Assessment Act 1997* (Cth) section 50-50(2) states that charities enjoying tax concessions (emphasis added):

(2) *The entity must:*

(a) ***comply with all the substantive requirements in its governing rules;***

(b) ***apply its income and assets solely for the purpose for which the entity is established.***

External Conduct Standards

Came into force on 23 July 2019.

Why were they needed?

- The charity sector has historically been subject to public scepticism, **especially around the destination of donations** → Charities accused of simply failing to get enough donations through to front-line charitable services;
- A need to ensure that Australian charity resources that are being sent outside of Australia **aren't being applied to terrorism, exploitation of vulnerable individuals, or other illegitimate purposes.**

External Conduct Standards

The External Conduct Standards generally apply to *all charities who are operating outside Australia, or providing money to third parties to be used outside Australia (including one-off sending of a minor amount of money or resources overseas)*.

ECS 1: Activities overseas and control of resources overseas

ECS 2: Annual review of overseas activities and record-keeping

ECS 3: Anti-fraud and anti-corruption

ECS 4: Protection of vulnerable individuals

External Conduct Standards

In a Church context, will likely apply to:

- Churches sending money to missionaries;
- Churches sending money for foreign disaster relief;
- Churches supporting schools or other churches overseas with money or other resources.

More information → See webinar:

15 October 2019

12:30 pm – 2:00 pm (Brisbane local time)

Reporting Requirements

Your Church will report to the ACNC, not to ASIC on most things.

The only things your Church will need to report to ASIC on are:

- Change of name of the company (including the omission of “Ltd” from the name);
- Notice of resignation or removal of auditor;
- Notification of external administration of the company;
- Application to deregister the company.

New ACNC Questions

The ACNC is asking questions in new charity registration applications about:

- Conflicts of Interest
- Financial Management
- Children and Vulnerable Adults

Sex Abuse Claims

Historic abuse → Get advice

Going forward → Demonstrate what the Church is doing every year to prevent abuse.

Successor entity liability → QLD, NSW and Vic

Other Considerations

- At first members' meeting, IF REQUIRED, appoint Auditor;
- Insurance;
- Advising donors and congregation of new bank details;
- Employment contracts → move them over to the new entity (based upon continuity of service);
- Whistleblower Policy.

QUESTIONS

Contact



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