

Article Information

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Reviewing the Constitution of Your Not for Profit? Here are 6 things you should bear in mind

Partner, Sarah Johnson discusses six areas your Not For Profit should consider when reviewing your constitution.

Does your charity operate outside of Australia or partner with organisations who do? What do the ACNC External Conduct Standards mean for your organisation?

Partner, Sarah Johnson and Law Graduate, Ashleigh Russo discuss the impact of the External Conduct Standards on registered charities operating overseas.

What are the External Conduct Standards?

Introduced in July 2019, the External Conduct Standards (**EC Standards**) set out minimum standards of governance, monitoring and reporting with which entities that are registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) must comply if they operate outside of Australia or partner with organisations that operate outside Australia (in whole or in part).

Affected entities must comply with the EC Standards in addition to complying with requirements of the existing ACNC Governance Standards. The EC Standards cover four distinct but related areas:

1. Activities and control of resources (including funds) - this standard requires affected entities to:
 - take reasonable steps (including maintaining internal and external controls) to ensure that its activities are carried out, and that resources given to third parties outside Australia are applied, in a manner that is consistent with its purpose and character as a not for profit entity; and
 - comply with Australian laws relating to money laundering, financing terrorism, sexual offences against children, slavery and trafficking of people.
1. Annual review of overseas activities and record-keeping - this standard requires affected entities to obtain and keep records necessary to prepare a summary of their activities outside Australia on a country by country basis;
2. Anti-fraud and anti-corruption - under this standard, affected entities are required to take reasonable steps to minimise any risk of corruption, fraud, bribery or other financial impropriety by its responsible entities, employees, volunteers and third parties outside Australia and to identify and document any perceived or actual material conflicts of interest involving those persons; and
3. Protection of vulnerable individuals - this standard requires affected entities to take reasonable steps to ensure the safety of vulnerable individuals outside Australia to the extent those individuals are:
 - being provided with services or accessing benefits under programs provided by the affected entity or any third party in collaboration with the affected entity; or
 - engaged by the affected entity or any third party in collaboration with the affected entity to provide such services or benefits.

How do I know if I need to comply?

Only charities that operate overseas or work with third parties operating overseas either entirely or in part are required to comply with the EC Standards. There are some complexities in relation to which activities will be caught by the

requirements and in particular, whether or not such activities are incidental to the entity's activities in Australia. If you are in any doubt as to whether or not your overseas activities are covered by the EC Standards, you should contact your professional advisor.

How is compliance with the External Standards regulated?

Affected entities are responsible for assessing their own compliance with the EC Standards to maintain their registration with the ACNC as a charity. The ACNC will not require charities to submit information demonstrating that they are meeting the requirements of the EC Standards. The ACNC has indicated that it will take action against charities that have serious or deliberately breached the EC Standards.

Entities either seeking registration with the ACNC or applying for new charitable subtypes will also be required to advise the steps they have undertaken to ensure compliance with the EC Standards if they operate overseas.

What should I be doing to ensure my organisation complies?

As stated in the Explanatory Statement introducing the Regulations enacting the EC Standards, the steps required to be taken by a particular entity to comply with the EC Standards will vary depending on its size, the scale of its operations inside and outside of Australia, the degree of risk of funds being misapplied in the destination country and the location and nature of the operations. Larger entities and entities with significant resources overseas may need to implement training and regular auditing of compliance with the EC Standards particularly where there is significant risk of funds being misappropriated or other breaches of the EC Standards occurring.

Registered charities covered by the EC Standards should, at minimum, make sure that they are familiar with the EC Standards and have documented the steps taken to ensure that their current activities and record keeping comply with the EC Standards and be prepared to demonstrate that compliance if required by the ACNC.