

# TISHER LINER FC LAW

## Annex: Governance standard 5, extracted from the Australian Charities and Not-for profits Commission Regulation 2013

### 45.25 Governance standard 5—Duties of responsible entities

#### *Object*

- (1) The object of this governance standard is:
  - (a) to ensure that the responsible entities of a registered entity conduct themselves in the manner that would be necessary if:
    - (i) the relationship between them and the entity were a fiduciary relationship; and
    - (ii) they were obliged to satisfy minimum standards of behaviour consistent with that relationship; and
  - (b) to give the public, including members, donors, employees, volunteers and benefit recipients of a registered entity, confidence that the registered entity:
    - (i) is acting to prevent non-compliance with the duties imposed on responsible entities; and
    - (iii) if non-compliance with the duties imposed on responsible entities occurs—will act to identify and remedy non-compliance with the duties imposed on the entity.

#### *Standard*

- (2) A registered entity must take reasonable steps to ensure that its responsible entities are subject to, and comply with, the following duties:
  - (a) to exercise the responsible entity's powers and discharge the responsible entity's duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered entity;
  - (b) to act in good faith in the registered entity's best interests, and to further the purposes of the registered entity;
  - (c) not to misuse the responsible entity's position;
  - (d) not to misuse information obtained in the performance of the responsible entity's duties as a responsible entity of the registered entity;
  - (e) to disclose perceived or actual material conflicts of interest of the responsible entity;
  - (f) to ensure that the registered entity's financial affairs are managed in a responsible manner;
  - (g) not to allow the registered entity to operate while insolvent.

Note: A perceived or actual material conflict of interest that must be disclosed includes a related party transaction.

- Note 1: Governance standard 5 sets out some of the more significant duties of responsible entities. Other duties are imposed by other Australian laws, including the principles and rules of the common law and equity.
- Note 2: Some of the duties imposed by other Australian laws may require a responsible entity to exercise its powers and discharge its duties to a higher standard.
- Note 3: For paragraph (f), ensuring that the registered entity's financial affairs are managed in a responsible manner includes putting in place appropriate and tailored financial systems and procedures.

The systems and procedures for a particular registered entity should be developed having regard to the registered entity's size and circumstances and the complexity of its financial affairs.

The systems and procedures may include:

- (a) procedures relating to spending funds (for example, the approval of expenditure or the signing of cheques); and
- (b) having insurance that is appropriate for the registered entity's requirements.

- (3) For paragraph (2)(e), a perceived or actual material conflict of interest must be disclosed:
  - (a) if the responsible entity is a director of the registered entity—to the other directors (if any); or
  - (b) if the registered entity is a trust, and the responsible entity is a director of a trustee of the registered entity—to the other directors (if any); or
  - (c) if the registered entity is a company—to the members of the registered entity; or

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(d) in any other case—unless the Commissioner provides otherwise, to the Commissioner, in the approved form.

Note 1: *Company* is defined in section 205-10 of the Act, to include a body corporate or any unincorporated association or body of persons (but not a partnership).

Note 2: Paragraph (c) applies in situations where paragraph (a) cannot apply, for example, if there is only one director or all the directors have a similar conflict.

Note 3: Part 7-6 of the Act provides for the approval of forms.

Note 4: A responsible entity may disclose a conflict of interest in the form of a standing notice with ongoing effect.

(4) If the responsible entity's conduct is consistent with Subdivision 45-C, the responsible entity is taken to have complied with the duties mentioned in subsection (2).

(5) In this section:

*insolvent* has the meaning given by subsection 95A (2) of the *Corporations Act 2001*.