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EXPOSURE DRAFT

Australian Charities and Not-for-profits Commission Amendment Regulations (No. 2) 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Minister name [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for [department name]

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1 Name

This instrument is the *Australian Charities and Not-for-profits Commission Amendment Regulations (No. 2) 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the commencement day referred to in section 50-20 of the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; and (b) 1 July 2019.	

Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Note 2: Section 50-20 of the *Australian Charities and Not-for-profits Commission Act 2012* relates to Parliamentary scrutiny of a regulation made for the purposes of section 50-10 of that Act.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Charities and Not-for-profits Commission Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Australian Charities and Not-for-profits Commission Regulation 2013

1 Section 4

Insert:

arrangement has the same meaning as in the Income Tax Assessment Act 1997.

child means an individual who is under the age of 18 years.

third party, in relation to a registered entity, means an entity that formally or informally collaborates with the registered entity for the purpose of advancing the registered entity’s purpose or purposes, and includes:

- (a) an entity with which the registered entity has some form of membership, association or alliance; and
(b) an entity that has an arrangement with the registered entity.

vulnerable individual means:

- (a) a child; or
(b) an individual who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation.

Example: An individual may be unable to take care of, or protect, themselves by reason of age, illness, trauma or disability.

2 Section 40.1, table, after item 2

Insert:

Table with 2 columns: Item number (2A) and Description (Overseas activities statement). The description text is: 'The registered entity has given the Commissioner an overseas activities statement as required by external conduct standard 2, set out in section 50.25.'

3 After Division 45

Insert:

Division 50—External conduct standards

Subdivision 50-A—Preliminary

50.1 Simplified outline—how the external conduct standards apply

The external conduct standards support registered entities in fulfilling their objectives, by providing a minimum level of assurance that they meet public expectations in relation to the conduct of a registered entity when it undertakes activities or provides funds, or otherwise supports activities outside Australia.

Australian registered entities play an important role in providing development assistance, essential services and humanitarian aid to those in need around the world. Unfortunately, there is a risk that criminal organisations may take advantage of registered entities, by misusing funds and providing a cover for, or support of, criminal activities.

The external conduct standards are intended to provide greater confidence that charitable funds sent, and services provided, outside Australia are reaching legitimate beneficiaries and are being used for legitimate purposes. The standards are also intended to prevent a registered entity from being misused by a criminal organisation.

The external conduct standards apply to registered entities in relation to matters both outside Australia and matters not outside Australia but closely related to entities, things or matters outside Australia (such as the management within Australia of overseas aid).

The external conduct standards assist in meeting Australia's international obligations including under the Financial Action Task Force Recommendations. The steps a registered entity will need to take to comply with the standards will vary according to its particular circumstances, such as its size, the sources of its funding, the nature of its activities (including the extent and importance of its activities outside Australia and resources given to parties outside Australia) and the needs of the public (including members, donors, employees, volunteers and benefit recipients of the registered entity).

The compliance obligations, processes and reasonable steps, specified in or required by, the external conduct standards are to be interpreted having regard to the objects of the Act and the matters the Commissioner must consider in exercising the Commissioner's powers as listed in section 15-10 of the Act (in particular, the principles of regulatory necessity, reflecting risk and proportionate regulation, as well as the unique nature and diversity of not-for-profit entities and the distinctive role that they play in Australia).

The objects of the Act are: to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

50.2 Interpretation

In this Division, the external conduct standards in Subdivisions 50-B and 50-C must be interpreted in a way that is consistent with the objects of the Act and the requirements of section 15-10 of the Act.

50.3 Application

For the purposes of section 50-10 of the Act, the external conduct standards in Subdivisions 50-B and 50-C are specified.

50.4 Application—operating outside Australia

- (1) For this Division, a registered entity, or a third party, operates outside Australia if it operates outside Australia in whole or in part.

- (2) However, a registered entity does not operate outside Australia only because it carries out activities outside Australia that are merely incidental to the operation and pursuit of a registered entity's purposes in Australia.

Subdivision 50-B—Standards about public accountability and financial matters

50.20 Standard 1—Activities and control of resources (including funds)

Object

- (1) The object of this external conduct standard is to give the public (including members, donors, employees, volunteers and benefit recipients of a registered entity to which the standard applies) trust and confidence that a registered entity is managed in a way that:
- (a) ensures that the registered entity remains solvent; and
 - (b) minimises the risks to the registered entity's assets; and
 - (c) ensures that the registered entity, and its resources, are furthering the registered entity's purposes; and
 - (d) ensures that the registered entity is operating in a way that is consistent with its purpose and character as a not-for-profit entity.

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or
 - (b) working with third parties that are operating outside Australia.

Standard

- (3) The registered entity must:
- (a) take reasonable steps to ensure that its activities outside Australia are carried out in a way that is consistent with its purpose and its character as a not-for-profit entity; and
 - (b) maintain reasonable internal control procedures to ensure that resources (including funds) are used in a way that is consistent with its purpose and character as a not-for-profit entity; and
 - (c) take reasonable steps to ensure that the resources (including funds) given to third parties outside Australia (or within Australia for use outside Australia) are applied:
 - (i) in accordance with the entity's purpose and character as a not-for-profit entity; and
 - (ii) with reasonable controls and risk management processes in place.

Note: Paragraphs (a) and (b) are intended to ensure that a registered entity has procedures in place to manage the risks associated with its own operations and activities. Paragraph (c) is intended to ensure that reasonable controls are in place with respect to resources given to third parties.

- (4) The registered entity must comply with Australian laws relating to any of the following:
- (a) money laundering;

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- (b) the financing of terrorism;
 - (c) sexual offences against children;
 - (d) slavery and slavery-like conditions;
 - (e) trafficking in individuals and debt bondage;
 - (f) people smuggling;
 - (g) international sanctions;
 - (h) taxation;
 - (i) bribery.
- (5) The registered entity must maintain reasonable internal control procedures to ensure compliance with the Australian laws mentioned in subsection (4).

50.25 Standard 2—Annual review of overseas activities and record-keeping

Object

- (1) The object of this external conduct standard is to ensure that a registered entity to which the standard applies is transparent and accountable to the public (including members, donors, employees, volunteers and benefit recipients of the registered entity) in relation to its activities carried out outside Australia.

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or
 - (b) working with third parties that are operating outside Australia.

Standard

- (3) The registered entity must obtain and keep records necessary to prepare a summary of its operations and activities outside Australia on a country by country basis (an ***overseas activities statement***) for each financial year during which it:
- (a) operated outside Australia; or
 - (b) gave resources (including funds) to third parties outside Australia (or within Australia for use outside Australia), other than resources provided to another registered entity.

Example: Records should be obtained and kept about the following information:

- (a) the kinds of operations and activities that the registered entity conducted outside Australia;
 - (b) details of how the registered entity's operations and activities outside Australia enabled it to pursue and achieve its purpose;
 - (c) details of any procedures and processes that the registered entity used to monitor its overseas operations and activities;
 - (d) a list of the third parties that the registered entity worked with outside Australia;
 - (e) details of any documented claims of inappropriate behaviour by the registered entity's employees or responsible entities outside Australia, and subsequent actions taken by the registered entity as a result.
- (4) If the Commissioner requires it, the registered entity must provide an overseas activities statement as part of its annual information statement.

- (5) The records obtained and kept must include information on the registered entity's expenditure relating to its operations and activities outside Australia on a country by country basis for the financial year.

Subdivision 50-C—Standards about conduct outside Australia

50.30 Standard 3—Anti-fraud and anti-corruption

Object

- (1) The object of this external conduct standard is to give the public (including members, donors, employees, volunteers and benefit recipients of a registered entity to which the standard applies) trust and confidence that the registered entity is managed in a way that:
- (a) ensures that the registered entity remains solvent; and
 - (b) minimises the risks to the registered entity's assets; and
 - (c) ensures that the registered entity, and its resources, are furthering the registered entity's purposes; and
 - (d) ensures that the registered entity is operating in a way that is consistent with its purpose and character as a not-for-profit entity.

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or
 - (b) working with third parties that are operating outside Australia.

Standard

- (3) The registered entity must take reasonable steps:
- (a) to minimise any risk of corruption, fraud, bribery or other financial impropriety by its responsible entities, employees, volunteers and third parties outside Australia; and
 - (b) to identify and document any perceived or actual material conflicts of interest for their employees, volunteers, third parties and responsible entities outside Australia.

Note: A responsible entity of a registered entity must also disclose all material conflicts of interest as one of their duties under governance standard 5—see section 45.25.

50.35 Standard 4—Protection of vulnerable individuals

Object

- (1) The object of this external conduct standard is to ensure that when a registered entity to which the standard applies operates outside Australia, it operates in a manner that minimises the risk of abuse to vulnerable individuals.

Application

- (2) This standard applies to a registered entity that is:
- (a) operating outside Australia; or

- (b) working with third parties that are operating outside Australia.

Standard

- (3) The registered entity must take reasonable steps to ensure the safety of vulnerable individuals outside Australia in relation to those individuals being provided with services or accessing benefits under programs provided by:
 - (a) the registered entity; or
 - (b) a third party in collaboration with the registered entity.
- (4) The registered entity must take reasonable steps to ensure the safety of vulnerable individuals outside Australia who have been engaged by:
 - (a) the registered entity; or
 - (b) a third party in collaboration with the registered entityto provide services or benefits on behalf of the registered entity or the third party.