



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

Submission on draft regulations and
explanatory statement for the proposed
External Conduct Standards for charities
registered with the Australian Charities and
Not-for-profits Commission

The Treasury

September 2018

About ACFID

The Australian Council for International Development (ACFID) is the peak body for Australian nongovernment organisations (NGOs) involved in international development and humanitarian action. Our vision is of a world where all people are free from extreme poverty, injustice and inequality and where the earth's finite resources are managed sustainably. Our purpose is to lead and unite our members in action for a just, equitable and sustainable world.

Founded in 1965, ACFID currently has 121 Members and 23 Affiliates operating in more than 95 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.65 billion (2016), \$930 million of which is raised from over 1.5 million Australians (2016). ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations. A list of ACFID Member Organisations is at Annex A.

ACFID members must comply with the [ACFID Code of Conduct](#), a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 32 Commitments and 90 compliance indicators, the Code sets good standards for rights, protection and inclusion of primary stakeholders, program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaints handling process.

Introduction

ACFID welcomes the opportunity to contribute to the exposure draft and explanatory notes for the External Conduct Standards for charities registered with the Australian Charities and Not-for-profits Commission. We welcome The Treasury's engagement with NGOs on this important legislation to ensure it is fit-for-purpose for the charitable sector.

ACFID supports standards for strong financial risk management and the protection of vulnerable people as central to the focus of charities in working with communities and enhancing trust and accountability to stakeholders and the wider public. The ACFID Code of Conduct was built off such standards over 20 years ago and has been a central tool in enhancing good practice across the international aid and development sector.

In meeting the requirements of the ACFID Code of Conduct, all our members would be expected to meet and exceed all External Conduct Standards as currently drafted. As with current ACNC practice we would recommend that this be recognised in relation to External Standard requirements.

ACFID's members work delivering critical international development and humanitarian programs around the world, and are thus regulated through a number of mechanisms, including the requirements set out by Australian Charities and Not-for-profits Commission governance standards, the Department of Foreign Affairs and Trade (DFAT), the requirements of tax deductibility under the Overseas Aid Gift Deduction Scheme (OAGDS), and the sector's own regulatory standard, the ACFID Code of Conduct. All ACFID members are required to comply with the ACFID Code of Conduct.

We believe that regulation should be done in line with a principled approach and should start from a clear position that aligns to the values and objectives of the ACNC and in a manner fit-for-purpose for the charitable sector. The introduction of any new regulation on a resource constrained charity sector should only be considered where there is a clearly evidenced and compelling case to do so and unnecessary regulatory burden should be removed wherever possible. Regulation to serve any other objective undermines the important work of the charity sector and is out of step with the expectations of the Australian donor community.

The ACNC has been an effective regulator in its first 6 years of operation. The Commission has worked effectively to build trust with the charities sector and the broader public, and has enhanced the accountability of the charity sector. We have welcomed a positive and productive relationship with the Commission during this time, ensuring that the regulatory aspects of the ACNC and the ACFID Code of Conduct are mutually reinforcing and building capacity within the sector.

Summary of Recommendations

ACFID supports standards for charities to enhance strong financial risk management and the protection of vulnerable people. To ensure the standards are clear and fit-for-purpose ACFID recommends the following:

1. The extension of similar standards to all Australian charities. The areas of risk identified in the outline to the legislation are not unique to charities who provide resources or services outside Australia.
2. Examples are provided in the explanatory material where organisations whose primary work is domestic would still need to meet the external conduct standards for their activities or resources overseas.
3. Requirements for complaints and whistleblowing policies and procedures should be considered.
4. Comprehensive guidance and learning opportunities are provided to support the implementation of these Standards.

External Conduct Standard 2

5. Organisations (including ACFID members) are presumed to be compliant with governance standards if they already comply with comparable governance requirements. Such organisations should be exempt from reporting. If reporting is required, it should be minimal for data collection purposes.

External Conduct Standard 3

6. The removal of 'perceived' in respect to conflict of interest. The term is open to varied interpretation, particularly in the cross-cultural contexts of delivering programs and services overseas.
7. Greater clarity on what a basic system and documentation is expected for smaller organisation be provided in the explanatory material. At a minimum we would recommend this include an organisational commitment to minimising financial impropriety, a process for identifying and managing financial risks and a process for tracking and reporting financial flows.

External Conduct Standard 4

8. The Standard includes protection of persons in vulnerable circumstances from exploitation as well as abuse.
9. The primary consideration for 'reasonable steps' implementing the standard the risk to vulnerable people rather than the size of the charity.
10. The explanatory note includes an expanded definition of persons in vulnerable circumstances.
11. Greater clarity on what a basic process should be in place are be provided in the explanatory material. At a minimum we would recommend this include an organisational commitment to the protection of vulnerable people, a process for identifying vulnerable groups and identifying and managing risks to vulnerable groups, an expectation of the behaviour of representatives of the entity and a documented safeguarding incident reporting procedure and complaints handling procedure that aligns with principles of privacy and promotes safety and dignity.

General comments

ACFID supports endeavours that serve to provide greater confidence that charitable funds sent, and services provided, outside Australia by Australian NGOs, are reaching legitimate beneficiaries and are being used for legitimate purposes. This is an objective that is also shared by the ACFID Code of Conduct. ACFID's 121 members reflect the diversity in size, form and ways of working across the charity sector. In implementing the ACFID Code of Conduct requirements we have found that, while flexibility to implement standards and good practice in a way that suits the size and operation of the organisation is essential, **the size of an organisation is not an impediment to implementing good practice and effective risk management.**

We support the broader application of these standards to entities operating outside Australia or working with third parties that operate outside Australia including Basic Religious Charities. While noting the value of the External Conduct Standards in meeting Australia's international obligations under the Financial Action Taskforce recommendations, the areas of risk identified in the outline to the legislation are not unique to charities who provide resources or services outside Australia. This is particularly the case in relation to the protection of vulnerable people but apply to all the standards. **We would encourage the extension of these standards to all Australian charities.**

It is important that these standards are considered in light of broader regulation for charities operating overseas. There is currently an inconsistent approach in regulation regarding tax concessions for charities providing services overseas. Currently international NGOs can gain tax concessions through becoming a Public Benevolent Institution (PBI) or applying to the Overseas Aid Gift Deduction Scheme (OAGDS). The [OAGDS process](#) requires organisations to meet a set of criteria including planning and appraisal, budgeting, financial management, implementation and monitoring (Criterion 2), partnership management and effectiveness (Criterion 3) and safeguarding (Criterion 4). This standard provides a framework that goes beyond risk management to effective design and development of programs and effective and respectful engagement with partners and communities. Those with PBI status are not required to meet these standards. ACFID strongly supports the more rigorous framework the OAGDS process provides to enhance good practice and effective outcomes in communities.

While it is understood that the majority of charities working overseas will be required to meet the External Conduct Standards. It is not clear whether the inconsistency between the requirements for OAGDS and the External Conduct Standards will continue or how the two regulatory requirements will interact. Requiring organisations to meet both the OAGDS standard and the External Conduct Standards could require duplication of reporting in areas of safeguarding and financial wrongdoing. This is contrary to the ACNC focus on reducing red tape and we would recommend this be considered. **Further to the recommendations put forward in this submission, we would also request that Treasury take into consideration the interaction of relevant deductible gift recipient status and requirements with the External Conduct Standards set out in the proposed legislation.**

We recognise that incidental overseas activity could be exempt from the External Conduct Standards. However, the definition of incidental to the pursuit of the entities purpose in Australia could be open to interpretation. **We would recommend examples are provided in the explanatory material where organisations whose primary work is domestic would still need to meet the external conduct standards for their activities or resources overseas.** This may assist in providing greater clarity.

We note that external complaints mechanisms and whistleblowing policies are a key mechanism in addressing safeguarding issues as well as being relevant to financial wrongdoing and accountability. **Requirements for complaints and whistleblowing policies and procedures should be considered to cover all areas of the External Conduct Standards.**

The Commission's commitment to capacity building within the sector through tools, guidance and learning opportunities aligns with the commitment of ACFID and its members to ongoing learning and good practice. Supporting the ACNC's focus on an educative approach to regulation, **we recommend that comprehensive guidance and learning opportunities are provided to support the implementation of these standards.** We would welcome opportunities to work with the ACNC in achieving this.

Comments regarding External Conduct Standard 2 and relevant explanatory material

- The ACNC has recognised the strength of the ACFID Code in going beyond the requirements of ACNC governance standards. The ACFID Code sets minimum public [financial and annual reporting standards](#), which includes a description of the most significant aid and development activities, a plain-language summary of income and expenditure and overall financial health and audited financial statements, including international program expenditure.
- In line with Recommendation 10 of the *Strengthening for Purpose: Australian Charities and Not-for-Profits Commission Legislation Review 2018* Report **we would recommend that organisations (including ACFID members) are presumed to be compliant with governance standards if they already comply with comparable governance requirements.**
- If reporting to ACNC is needed for such organisations, say for data capture reasons, then consideration should be given to making information requirements minimal and designed so that information can be extracted from existing annual reports. Entities who do not have other reporting obligations could still be asked to complete an overseas activities report to collect their information.

Comments regarding External Conduct Standard 3 and relevant explanatory material.

- In line with Recommendation 9 of the *Strengthening for Purpose: Australian Charities and Not-for-Profits Commission Legislation Review 2018* Report, **we would recommend the removal of ‘perceived’ in respect to conflict of interest.** As outlined in the *Strengthening for Purpose* Report, the term is open to varied interpretation, particularly in the cross-cultural contexts of delivering programs and services overseas.
- The explanatory material would be strengthened by providing greater clarity on what a basic system and documentation would include for smaller organisations (similar to that provided for larger organisations). **At a minimum we would recommend this include an organisational commitment to minimising financial impropriety, a process for identifying and managing financial risks and a process for tracking and reporting financial flows.**

Comments regarding External Conduct Standard 4 and relevant explanatory material

- We welcome the continuation of a focus on safeguarding from OAGDS requirements and its expansion to all vulnerable people.
- Noting the definition of vulnerable people in the standards extend to those who are unable to protect themselves against harm or exploitation, we believe the standard and explanatory notes would be **strengthened by the explicit inclusion of protection from exploitation as well as abuse.**
- We recognise and support the approach which allows for reasonable steps to provide for factors such as the size of organisation in implementing these standards. However, in relation to External Conduct Standard 4 in particular, **we recommend that the primary consideration for ‘reasonable steps’ be the risk to vulnerable people rather than the size of the charity.** The obligation to protect should place communities and all people at the centre and not be based around organisation focused considerations.
- The understanding of vulnerability is complex and it is important that the human rights of all people are respected and protected. **The explanatory note would be strengthened by an expanded definition of persons in vulnerable circumstances.** While, this is addressed in a number of ways in the international aid and development sector globally, in the ACFID Code of Conduct, we have approached this definition as follows – “those who are vulnerable and those who are affected by the intersecting drivers of marginalisation and exclusion, including, but not restricted to race, religion, ethnicity, indigeneity, disability, age, displacement, caste, gender, gender identity, sexuality, sexual orientation, poverty, class and socio-economic status¹”.
- The explanatory material would be strengthened by providing greater clarity on what basic processes should be in place. **At a minimum we would recommend this include an**

¹ See ACFID Code of Conduct Commitment 1.2 We respect and respond to the needs, rights and inclusion of those who are vulnerable and those who are affected by marginalisation and exclusion - <https://acfid.asn.au/content/commitment-12-we-respect-and-respond-needs-rights-and-inclusion-those-who-are-vulnerable-and>

organisational commitment to the protection of vulnerable people, a process for identifying vulnerable groups and identifying and managing risks to vulnerable people, an expectation of the behaviour of representatives of the entity and a documented safeguarding incident reporting procedure and complaints handling procedure that aligns with principles of privacy and promotes safety and dignity.

- Both [DFAT](#) and [ACFID](#) have clear and aligned requirements for organisations in regards to child safeguarding. It would be useful for the External Conduct Standards to be consistent and aligned with these approaches.
- We would encourage the ACNC to provide resources to assist charities to better understand human rights, identify risks that communities and individual face with regards to discrimination, violence, abuse, exploitation and neglect and avoid exposing people to unintentional harm and strengthen good practice with respect to working with vulnerable populations. Relevant guidance material developed to support the Modern Slavery Act and to DFAT's Smart Volunteer Campaign, DFAT's Child Protection policy and other resources should be included to promote cohesion and consistency across government.

We would be happy to provide additional clarity on any of the recommendations contained within this submission. Follow up requests should be directed to Marc Purcell, CEO, ACFID: (02) 6285 1816.

Annex



AUSTRALIAN
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Full Members:

- ACC International Relief
- Act for Peace - NCCA
- ActionAid Australia
- Action on Poverty
- Adara Development Australia
- ADRA Australia
- Afghan Australian Development Organisation
- Anglican Aid
- Anglican Board of Mission - Australia Limited
- Anglican Overseas Aid
- Anglican Relief and Development Fund Australia
- Asian Aid Organisation
- Assisi Aid Projects
- Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine
- Australia for UNHCR
- Australian Business Volunteers
- Australian Doctors for Africa
- Australian Doctors International
- Australian Himalayan Foundation
- Australian Lutheran World Service
- Australian Marist Solidarity Ltd
- Australian Medical Aid Foundation
- Australian Mercy
- Australian Red Cross
- Australian Respiratory Council
- AVI
- Beyond the Orphanage
- Birthing Kit Foundation (Australia)
- Brien Holden Vision Institute Foundation
- Bright Futures Child Aid and Development Fund (Australia)
- Burnet Institute
- Business for Development
- CARE Australia
- Caritas Australia
- CBM Australia
- ChildFund Australia
- CLAN (Caring and Living as Neighbours)
- Credit Union Foundation Australia
- Diaspora Action Australia
- Diplomacy Training Program
- Door of Hope Australia Inc.
- Edmund Rice Foundation (Australia)
- EDO NSW
- Engineers without Borders
- Every Home Global Concern
- Family Planning New South Wales
- Fairtrade Australia New Zealand
- Food Water Shelter
- Foresight (Overseas Aid and Prevention of Blindness)
- Fred Hollows Foundation, The
- Graceworks Myanmar*
- Global Development Group
- Global Mission Partners
- Good Return
- Grameen Foundation Australia
- Habitat for Humanity Australia
- Hagar Australia
- HealthServe Australia
- Heilala
- Hope Global
- International Christian Aid and Relief Enterprises
- International Needs Australia
- International Nepal Fellowship (Aust) Ltd
- International River Foundation
- International Women's Development Agency
- Interplast Australia & New Zealand
- Islamic Relief Australia
- KTF (Kokoda Track Foundation)
- Kyeema Foundation
- Lasallian Foundation
- Leprosy Mission Australia, The
- Live & Learn Environmental Education
- Love Mercy Foundation
- Mahboba's Promise Australia
- Marie Stopes International Australia
- Marist Mission Centre
- Mary MacKillop International
- Mary Ward International Australia
- Mercy Works Ltd.
- Mission World Aid Inc.

- MIT Group Foundation
- Motivation Australia
- Murdoch Children's Research Institute
- MAA (Muslim Aid Australia)
- NTA East Indonesia Aid
- Oaktree Foundation
- Opportunity International Australia
- Our Rainbow House
- Oxfam Australia
- Palmera Projects
- Partner Housing Australasia
- Partners in Aid
- Partners Relief and Development Australia
- People with Disability Australia
- PLAN International Australia
- Quaker Service Australia
- RedR Australia
- Reledev Australia
- RESULTS International (Australia)
- Royal Australian and New Zealand College of Ophthalmologists
- Royal Australasian College of Surgeons
- Salesian Missions
- Salvation Army International Development
- Save the Children Australia
- School for Life Foundation
- SeeBeyondBorders
- Sight For All
- So They Can
- Sport Matters
- Surf Aid International
- Tamils Rehabilitation Organisation Australia
- TEAR Australia
- Transform Aid International (incorporating Baptist World Aid)
- UNICEF Australia
- Union Aid Abroad-APHEDA
- UnitingWorld
- WaterAid Australia
- Water for a Village
- World Hope International
- World Vision Australia
- WWF-Australia
- YWAM Medical Ships

Affiliate Members:

- Asia Pacific Journalism Centre
- Australian Federation of AIDS Organisations
- Australian National University – School of Archaeology and Anthropology, College of Arts and Social Sciences
- Charles Darwin University – Menzies School of Health Research
- Deakin University – Alfred Deakin Research Institute
- James Cook University – The Cairns Institute
- La Trobe University – Institute of Human Security and Social Change
- Monash Sustainable Development Institute**
- Murdoch University – School of Management and Governance
- Queensland University of Technology – School of Public Health and Social Work
- Refugee Council of Australia
- Swinburne University of Technology Centre for Design Innovation
- Transparency International Australia
- United Nations Association of Australia**
- University of Adelaide – Department of Anthropology and Development Studies**
- University of Melbourne – School of Social and Political Sciences
- University of New South Wales- International
- University of Queensland – Institute for Social Science Research
- University of Sydney – Office of Global Engagement
- University of Technology, Sydney – Institute for Sustainable Futures
- University of Western Australia – School of Social Sciences
- Vision 2020
- Western Sydney University- School of Social Sciences and Psychology

* Denotes Interim Full Member

** Denotes Interim Affiliate Member

