

Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

ExternalConductStandards@treasury.gov.au

20 September 2018

Dear Sir/Madam

External conduct standards for charities registered with the Australian Charities and Not-for-profits Commission

Thank you for the opportunity to provide comments on the draft Australian Charities and Not-for-profits Commission Amendment Regulations (No. 2) 2018 and explanatory materials.

Aged & Community Services Australia

Aged & Community Services Australia (ACSA) is the leading aged care peak body supporting over 700 church, charitable and community-based, not-for-profit organisations. Not-for-profit organisations provide care and accommodation services to about one million older Australians¹. ACSA represents, leads and supports its members to achieve excellence in providing quality affordable housing and community and residential care services for older Australians.

Aged care charities

The report *Australia's Aged Care Charities in 2015*² which profiles 1,465 registered charities with aged care as their main activity, noted:

- 'While many aged care charities deliver residential aged care and home care services as part of the national aged care system, charities perform a much wider range of activities benefiting older people, including providing cultural and recreational opportunities, social services and religious services'; and
- 'Very few aged care charities said they had overseas operations (24 or 1.6% of all aged care charities)'.

Regulation

ACSA's view is that regulation including conduct standards should always be broad-based and outcomes-focused so it does not unnecessarily interfere with the efficient and effective operation of the sector being regulated. Having said that there is a need to ensure the right

¹ Australian Government, Department of Health, 2016-17 Report on the Operation of the *Aged Care Act 1997*, November 2017

² Cortis, N., Powell, A., and Ramia, I. (2017) *Australia's Aged Care Charities in 2015*. Centre for Social Impact and Social Policy Research Centre, UNSW Australia; pages 8 and 22

regulation is in place and operating efficiently and effectively while acknowledging that no amount of regulation will completely prevent errors.

Regulation needs to be based on clear evidence and support desired outcomes. Regulation and regulatory processes need to be proportionate to the risk being addressed with a focus on outcomes rather than on systems and processes that prove compliance.

The extent of the existing regulatory burden placed on charities by governments is clearly demonstrated by the information published by the Australian Charities and Not-for-profits Commission³.

Comments on the draft regulations and explanatory materials

Overall

The proposed four standards are intended to promote transparency and greater confidence in the not-for-profit sector that funds sent and services provided overseas are reaching legitimate beneficiaries and are being used for legitimate purposes.

The proposed four standards are in relation to:

1. Activities and control of resources (including funds).
2. Annual review of overseas activities and record-keeping.
3. Anti-fraud and anti-corruption.
4. Protection of vulnerable individuals.

ACSA supports the intention of promoting transparency and greater confidence that funds sent and services provided overseas are reaching legitimate beneficiaries and are being used for legitimate purposes.

The policy rationale for having different regulations in place depending on where a charity operates should be explained. Also having different regulations depending on where a charity operates results in a more complicated and expensive system and therefore less money is available for charitable purposes.

ACSA is also concerned that some aspects of the draft regulations are focused on systems and processes that prove compliance rather than a focus on outcomes.

Complying with Australian laws

Under Standard 1 - Activities and control of resources (including funds), it will be a requirement for charities to comply with nine Australian laws (including money laundering, slavery and slavery-like conditions, taxation and bribery) and to maintain reasonable internal control procedures to ensure compliance with these nine laws (proposed subsections 50.20(4) and 50.20(5)).

The purpose of including these requirements is unclear and they don't appear to add anything to what charities are already required to do. It also means potential additional regulation for

³ [List of regulators that may affect charities](#); [State and Territory regulation of charities](#); [Obligations charities may have to other regulators](#); Australian Charities and Not-for-profits Commission website

charities as another regulator (the Australian Charities and Not-for-profits Commission) can be involved in the administration of these Australian laws (for example in addition to the police and the Australian Taxation Office).

Reasonable

The external conduct standards will set principles-based minimum standards for charities and are focused on what is reasonable in the particular circumstances.

ACSA is concerned the proposed regulations rely too much on what is reasonable and therefore the law will be uncertain. What one person considers reasonable may not be what another person considers reasonable and views about whether something is reasonable or not may change over time.

ACSA understands the Australian Charities and Not-for-profits Commission will publish guidelines after the regulations have been made. It will be essential that consultation is undertaken on these guidelines and that the guidelines are in place several months before the regulations commence.

Explanatory materials

ACSA considers that more examples need to be included in the explanatory materials. For example: to illustrate what is reasonable and what is not reasonable; and examples of what activities outside Australia would not be considered incidental to operations and purposes in Australia.

Contact

For further information, I can be contacted on 02 6282 7827 or Deidre.Gerathy@acsa.asn.au.

Yours faithfully

[signed]

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POLICY DEVELOPMENT OFFICER

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