



Anglican Church Diocese of Sydney

ST. ANDREW'S HOUSE SYDNEY SQUARE NSW 2000
ALL CORRESPONDENCE TO:
PO BOX Q190 QVB POST OFFICE NSW 1230

TELEPHONE: (02) 9265 1555

24 September 2018

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

BY EMAIL: ExternalConductStandards@treasury.gov.au

Treasury's consultation in respect to proposed External Conduct Standards for charities registered with the Australian Charities and Not-for-profits Commission

Thank you for the opportunity to provide comments on proposed external conduct standards that will apply to certain charities registered with the Australian Charities and Not-for-profits Commission.

We wish to make some targeted comments in relation to the proposed standards.

Incidental activities involving working with third parties that conduct operations outside Australia

Proposed section 50.4(2) clarifies when an entity does not operate outside Australia. It provides that:

“...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.”

There is no equivalent provision to exclude incidental arrangements where an entity is “working with third parties that are operating outside Australia”.

The Explanatory Statement gives the example of a school that arranges for students to go on a trip to a sister school in Canada as being an excluded incidental overseas operation (example 3, page 4). However while the school in question might be exempt on this basis, it may nonetheless be required to comply with the proposed Standards on that basis that it “works with a third party that is operating outside Australia”. The sister school in Canada would presumably meet the definition of “third party” given there would be elements of collaboration and arrangement.

The existence of this example in the Explanatory Statement suggests that incidental activities of this nature are not intended to be covered by the Standards, notwithstanding that presently there is no exclusion in the proposed regulations where the work with the third party is incidental.

In a situation where the connection with the third party is incidental, the registered entity may not be able to meet the Standards. The registered entity will not necessarily be entitled to the information it needs to undertake the required assessments or keep the required records. It may also not have sufficient power in relation to the third party to ensure that the third party takes reasonable steps in providing benefits or services outside Australia.

The provision of funding or other resources to another registered entity

To the extent working with a third party involves providing funds or other resources, the Standards should only apply to the registered entity that operates outside Australia or sends the funds or resources outside Australia.

Many churches make or coordinate appeals for overseas aid projects or for missionary societies. These amounts are then transferred to a registered entity that conducts operations outside Australia or which has a direct relationship with a third party overseas aid partner or mission society.

It will create an unnecessary regulatory burden to require all registered entities that provide funds to comply with the Standards in relation to the same operations. It should be sufficient that only the registered entity that operates outside Australia or which sends the funds or resources outside Australia be required to comply.

This concern will be addressed if there is a provision specifying that a registered entity does not work with a third party that is operating outside Australia only if it provides funds or other resources to another registered entity.

Reasonable steps

There are various places where the Standards require the registered entity to take “reasonable steps” to ensure certain matters (for example, in Standard 4, to ensure the safety of vulnerable individuals).

We consider that an interpretive provision should be inserted to clarify that “reasonable steps” are to be understood by reference to the overseas context, and are not necessarily the steps that would be reasonable to take in Australia in those same circumstances. Some steps may not be possible or feasible in a warzone or an environment where there are few resources available. In other cases, taking steps that would be reasonable in Australia might jeopardise the safety of a person in an overseas context (for example, where there is local corruption).

Recommendations

We recommend that:

1. A new section 50.5 be inserted as follows:

50.5 Application – working with third parties that are operating outside Australia

A registered entity does not work with a third party that is operating outside Australia only because it –

- (a) carries out activities that are merely incidental to the pursuit of its purposes in Australia, or
- (b) provides funds or other resources to another registered entity.

2. Section 4 or Subdivision 50 include a provision to the effect of the following:

“A requirement to take reasonable steps is to be understood by reference to the steps that would be reasonable to take in the context in which the operations are occurring outside Australia”.

Yours sincerely



The Right Reverend Dr Michael Stead
Bishop of South Sydney