



20 September 2018

BY EMAIL: ExternalConductStandards@treasury.gov.au

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

Dear Sir/Madam,

Catholic Religious Australia Submission - Draft External Conduct Standards for Charities

Catholic Religious Australia (**CRA**) is the peak body for leaders of Religious Institutes and Societies of Apostolic Life within the Catholic Church in Australia. The membership comprises more than 150 congregations of religious sisters, brothers and priests living and working in all states and territories across Australia.

CRA has significant concerns about the draft Australian Charities External Conduct Standards (**the Standards**) and how they may significantly impact on the many charitable works currently undertaken by a large number of our member organisations. We are particularly concerned about the significant additional administrative burden, the diversion of resources, the risks of non-compliance and consequent loss of the benefits of registration as a charity and the real possibility that member congregations will withdraw from charitable support in response to overseas needs because of the risks and administration involved.

To elaborate further we will provide you with an example of a congregation to assist in your understanding of how congregations may be impacted, we will provide some overall comments in relation to the Standards and then we will provide some comments specific to particular clauses in the Standards.

Thank you for the opportunity to comment on the draft Standards.

An Example Congregation

Congregation X is the Australian operation of a larger international religious society (**Society**) that operates in 15 countries. Congregation X is registered as a charity with the ACNC. Donations to Congregation X do not attract tax deductibility.

The Society operates in overseas areas where the local people are disadvantaged. It is the role of the Society's first world member countries (such as Congregation X) to raise funds to support the congregation's work in the disadvantaged areas. Funds from its local annual operations are transferred to the Society overseas. The governing body of the Society decides on the dispersal of

funds to those countries that are in need. The governing body of the Society has oversight of the financial performance, including expenditure, and operations in the receiving countries.

In addition, Congregation X receives donations directed towards particular congregational projects overseas. For example, Mrs Smith sends in \$20.00 and states that she wants the money to support a congregational project in Peru. In that case the funds are sent to congregational representatives in Peru for the designated purpose. It is possible that this project may only receive this single \$20.00 donation from Australia in a financial year.

The congregation has been operating in Australia in this manner since 1922.

Congregation X is not an atypical example.

Overall Comments

The obligations that would be imposed upon congregations is overly burdensome and not warranted. The legislative response to issues relating to external conduct of registered charities should be proportionate to the risk.

We note that the Explanatory Materials (**EM**) states on page 7 that the Standards are "*not intended to be onerous*". Whilst this statement may on the face of it indicate those intentions, in reality the statement provides no comfort and we contend that the imposition of the Standards will be very onerous for many of our congregations.

This is evident if one was to apply the Standards to Congregation X as it would likely involve reporting in respect of 15 overseas jurisdictions if its funds are applied for their support, as well as for one-off minor donations such as the Peru donation referred to above.

The imposition of these burdensome Standards is contrary to the objective stated in the *Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act)* which provides that it is an object of the Act "*to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector*". The extent of proposed regulation under the Standards is in the opinion of our members unnecessary and overly burdensome. It runs contrary to the ACNC mantra of "*cutting red tape*".

The detail required in obtaining and keeping records and completing an overseas activity statement is extensive particularly when one considers the expectations on page 8 of the EM including preparation of records and keeping of the following information:

- the kinds of operations and activities that the registered entity conducted outside Australia on a country by country basis;
- details of how the registered entity's operations and activities outside Australia enabled it to pursue and achieve its purpose, on a country by country basis;
- details of all expenditure relating to its operations and activities outside Australia on a country by country basis;
- details of any procedures and processes that the registered entity used to monitor its overseas operations and activities;
- a list of the third parties that the registered entity worked with outside Australia; and
- 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.

In addition, completion of an overseas activity statement will involve further duplication with other reporting requirements of registered charities. Some of our religious congregations are members of the Australian Council for International Development (**ACFID**) and as such maintain agreed standards of good practice, transparency and accountability. Their financial statements already comply with the presentation and disclosure requirements of the ACFID code of conduct as well as the ACNC annual reporting requirements. The requirements under the draft Standards to detail all expenditure relating to operations and activities outside Australia will involve further duplication. We note that this runs contrary to the ACNC's stated aim of establishing a charity passport whereby disclosure to one department will be accepted for the purposes of compliance with another.

Basic Religious Charities (BRCs)

Most of our member congregations are BRCs and as such they have relief from the obligation to provide financial reports. Congregation X falls within that category at present for example.

The proposed overseas activity statement will not only run contrary to the intention to relieve BRCs from administrative burden but will add significant burden to them because of the need to establish infrastructure and administrative support when they are not currently structured to do so because of the BRC exemption.

Risk of Non-Compliance

The extent of detail required is far-reaching and, in many cases, either impractical or impossible to achieve.

We note that the Standards are based around taking "*reasonable steps*" or having in place "*reasonable procedures*". The concepts of 'reasonable steps' and 'reasonable procedures' are amorphous and any judgment by the ACNC as to whether these Standards have been satisfied must be subjective. Because of the far-reaching nature of the obligations, it will be difficult for registered charities to ever be confident that they satisfy the requirements.

Obligations under the Standards extend to protective measures taken by third parties. The definition of 'third parties' is extraordinarily broad and would extend under the terms of the EM to a party with which the registered charity has an unenforceable non-express understanding. It would even extend to an organisation with which there is "*some form of association*". What the level of association is is very subjective. Would it mean any other Christian group?

Our members struggle to understand how it might be possible for them to take steps which might be considered by the ACNC to be reasonable to ensure that these third parties advise the registered charity of any inappropriate behaviour by its employees and of actions taken by it as a result. How can it reasonably be expected that Australian charitable entities can drill down into the risk management processes of these remote third parties?

The consequences for registered charities if they are found not to comply with the Standards are very significant.

"Incidental" Activities

We note that clause 50.4(2) of the Standards limits the definition of "*operating outside Australia*" by excluding activities that are "*merely incidental*".

Whilst this limitation is welcome, it is not particularly helpful and is ineffective in practice in our view. Each of the Standards applies to a registered entity that is:

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

The concession in the definition of "*operating outside Australia*" is ineffective because in each case where registered charities are involved in incidental activities outside Australia, they will nonetheless be "*working with third parties that are operating outside Australia*". Compliance with the Standards will therefore be required.

Examples of incidental activities overseas which would then require compliance because of the involvement of third parties would include schools sending groups overseas for an immersion experience, parishes supporting overseas projects or sending parishioners or staff overseas, small mission trips and smaller funding.

The attempt to relieve charities that only have incidental activities overseas from the Standards is recognition in itself of the burden that would be placed upon them if they had to comply with the Standards. However, in practice for the reasons indicated above it will not relieve that burden.

It is our view that examples 1 and 3 are misleading in that both examples would involve an arrangement with a third party and therefore attract the Standards.

For the concession to have any practical advantage to registered charities, subclause (2)(b) should be removed from each of the Standards.

Compliance with Australian Laws

We note that standard 50.20(4) requires compliance with Australian laws including "*sexual offences against children*". Despite the best intentions of registered charities, compliance with the complex Australian laws relating to sexual offences against children will in many cases be impossible in respect of overseas activity. Quite rightly, Australian parliaments have developed laws requiring complex procedures to assist in safeguarding children in respect of potential sexual offences. However most other countries do not have these laws or systems. As a consequence, it will be impossible in some cases to comply with the Australian laws relating to sexual offences against children. For example, it will not be possible to do a "*working with children*" check in respect of local employees as the local system will have no provision for that in many cases.

In addition, some of our members' staff can be at risk as to their personal safety by implementing Australian standards relating to mandatory reporting of any incidents (e.g. child abuse, domestic violence) where the abuser or other associated persons become aware of these allegations. This can result in further abuse and violence against staff. This is particularly the case in countries where there are no laws to protect them, which leaves them vulnerable as the local police will not provide protection if no local laws have been broken.

We submit that the protection of children is adequately addressed in standard 4 which requires the registered charity to take reasonable steps to ensure the safety of vulnerable individuals outside Australia. We suggest that clause 50.20(4)(c) be deleted for that reason.

Materiality

The level of the administrative burden associated with compliance requires that real relief should be given to those organisations whose activities outside Australia are small.

For that purpose, we recommend that the Standards only apply to entities operating outside Australia where their financial involvement exceeds the greater of \$200,000.00 or 5% of the registered charity's operating expenditure.

Specific Comments

We request that serious consideration be given to not proceeding with the Standards or any external conduct standards at all without a significant rethink around the unnecessary impact and burden they will impose upon many registered charities. Whilst this impact may be unintended, it is our strong view that it will be a consequence of adoption of the Standards.

However, in the event that it is determined that the Standards will be adopted after modification when any responses are taken into account, we recommend consideration of the following changes:

1. Each Standard

Limit the application of the Standards to registered entities that operate outside Australia as defined under clause 50.4. To achieve this, we recommend that subclause (2) under each of the Standards be amended to read:

"(2) This Standard applies to a registered entity that is operating outside Australia."

There may be further consequential amendments required.

2. Clause 50.4

Limit the application of the Standards to registered entities that operate outside Australia but whose expenditure overseas is not material in the context of its overall operations. We suggest insertion of the following:

"(3) However, a registered entity which operates outside Australia is not required to comply with the Standards where its expenditure related to its activities outside Australia do not exceed the greater of \$200,000.00 or 5% of its annual operating expenses in the relevant year."

3. Clause 50.20(3)(c)(ii)

Delete this subclause because it will prove to be in practice overly burdensome, impractical and in some cases impossible to satisfy.

4. Clause 50.20(4)(c)

Delete this subclause because compliance will likely be impossible due to the complexity of laws in Australia and the lack of infrastructure overseas to comply (see comments above). We feel the protection of children whether relating to sexual offences or more broadly is adequately and appropriately covered under standard 4.

5. Clause 50.25(3)(b)

Delete this subclause because it will also prove to be in practice overly burdensome, impractical and in some cases impossible to satisfy.

Further, if the subclause is to substantially remain, delete examples (d) and (e) for the same reasons.

In addition, if the subclause is to substantially remain, the exception should extend not just to Australian registered charities but to any charities provided they are legally constituted as charities in their own jurisdiction.

6. Clause 50.25(4)

Insert the following sentence:

"A registered charity will not be required to provide information in an overseas activity statement which has already been disclosed in a statement lodged with another Commonwealth department."

7. Clause 50.30(3)

Delete references to third parties because it will prove to be in practice overly burdensome, impractical and in some cases impossible to satisfy. In particular, identifying and documenting perceived or actual material conflicts of interest for third parties will not be practically possible.

8. Clause 50.35(3)(b) and clause 50.35(4)(b)

Delete these subclauses because they will prove to be in practice overly burdensome, impractical and in some cases impossible to satisfy.

We urge complete reconsideration of the imposition of Standards. They have not been considered necessary over the past 6 years since the commencement of the ACNC Act.

If Standards are to be imposed, they should take into account: the impact that these will have upon registered charities, particularly smaller and less sophisticated charities; the imposition of significant additional administrative burden; the practicalities of compliance, particularly in relation to third parties; the creation of certainty to give registered charities confidence that they can comply with the Standards and can continue their activities; and the requirement for charities to allocate resources to administration to comply with the Standards that might otherwise be applied for their direct charitable purposes.

Yours faithfully



Anne Walker
National Executive Director